

Plaintiffs' Cross-Notice of Remote Deposition
and Non-Retained Expert Witness Disclosure of
Dr. Rahul Gupta

Exhibit 5

Gupta Trial Testimony
City of Huntington, et al. v. ABDC, et al.
3:17-cv-01362, 3:17-cv-01655

May 5, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

_____	x	
	:	
THE CITY OF HUNTINGTON,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01362
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

_____	x	
	:	
CABELL COUNTY COMMISSION,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01665
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

BENCH TRIAL - VOLUME 3
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

MAY 5, 2021

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Court Reporter: Ayme Cochran, RMR, CRR
Court Reporter: Lisa A. Cook, RPR-RMR-CRR-FCRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 he's here and he's ready to go, okay?

2 MR. FARRELL: Thank you.

3 THE COURT: And we'll be in recess until that
4 time.

5 (Recess taken)

6 (Proceedings resumed at 10:36 a.m. as follows:)

7 MS. KEARSE: Good morning, Your Honor.

8 Your Honor, plaintiffs call Dr. Rahul Gupta.

9 THE COURT: Okay, Dr. Gupta, come up here and the
10 clerk will give you the oath, sir.

11 THE CLERK: Would you please state your full name
12 for the record.

13 THE WITNESS: My full name is Dr. Rahul Gupta.

14 THE CLERK: Thank you. Please raise your right
15 hand.

16 **RAHUL GUPTA, PLAINTIFFS' WITNESS, SWORN**

17 THE CLERK: Thank you. Please take a seat.

18 DIRECT EXAMINATION

19 BY MS. KEARSE:

20 **Q.** Good morning, Dr. Gupta. Can you please introduce
21 yourself to the Court?

22 **A.** Good morning. My name is Rahul Gupta. I'm currently
23 the Senior Vice President, Chief Medical Officer, and the
24 Chief, Interim Chief Science Officer at March of Dimes.

25 **Q.** Dr. Gupta, can you tell the Court what prior capacities

1 you have served in in State of West Virginia?

2 **A.** I have served from March of 2009 to December of 2014 as
3 the Physician Director, Local Health Officer, Executive
4 Director locally at the Kanawha-Charleston Health
5 Department.

6 And within that frame or portion, I also served as the
7 Executive Director and Health Officer for Putnam County
8 Health Department.

9 From January of 2015 to November of 2018 I served as
10 the Commissioner for the Bureau of Public Health, the
11 Department of Health and Human Resources for the State of
12 West Virginia, and the state's State Health Officer.

13 **Q.** Did those positions involve public health?

14 **A.** They both involved public health and they are written
15 into the statute of the State of West Virginia.

16 **Q.** Dr. Gupta, is it safe to say you have a background in
17 public health?

18 **A.** Yes.

19 **Q.** Can you tell the Court a little bit about your
20 background specific to public health?

21 **A.** My background in public health began with my medical
22 school curriculum. That was at the beginning of -- or
23 August of 1988. That went up to December of 1992. That
24 included significant training rotations and the like in
25 preventive medicine and public health.

1 It was followed up by one year rotary internship from
2 January 1, 1993, to December 31st, 1993. It also included
3 spending about three months in public health as a
4 practitioner.

5 It was followed by launching -- helping launch one of
6 the first, the first post-polio campaigns in Delhi where we
7 vaccinated over two million children with polio in one day
8 across Delhi which is now a city of 25 million people. And
9 eventually those efforts expanded across the country in
10 India and led to the elimination of polio from a nation of
11 1.3 billion people 20 years later and was certified as such
12 by the international agencies.

13 That was followed by my residency in Chicago. There
14 was significant emphasis on public health as part of
15 internal medicine residency training.

16 That led me to work in the rural parts of Alabama where
17 public health was intricately weaved into the work that I
18 was doing as a clinician in many respects I can go in-depth
19 into, which was followed by me not only becoming a
20 practitioner and a faculty at UAB, University of
21 Alabama-Birmingham, but also pursuing a degree, a Master's
22 of Public Health that included a variety of trainings and
23 aspects of formal training in public health, following which
24 I have continued to work in aspects of public health both in
25 Alabama and Tennessee prior to taking full-time positions in

1 2009 in West Virginia in public health.

2 **Q.** Thank you, Doctor. And in regards to this case, have
3 we asked you to appear to testify specific to your work in
4 West Virginia?

5 **A.** Yes.

6 **Q.** And specifically about your work as the Commissioner of
7 Public Health for the State of West Virginia?

8 **A.** Yes.

9 **Q.** And while you've been involved in your work in West
10 Virginia, have you taught about public health?

11 **A.** Yes.

12 **Q.** And can you tell the Court specific to West Virginia
13 matters as the Commissioner of Public Health, what have you
14 been involved in in teaching with regards to public health?

15 **A.** The work I had done as a local health officer in
16 Kanawha-Charleston and Putnam County has also followed me in
17 my role as Commissioner. What that means is during the
18 course of my public health career as Commissioner, State
19 Health Office for the State of West Virginia, I have taught
20 as faculty at Harvard TH Chan School of Public Health
21 regularly, as well as given lectures to John Hopkins
22 Bloomberg School of Public Health.

23 And some of those areas included the risk communication
24 in public health. It included addressing chemical and other
25 types of disasters. So the class that I would teach at

1 Harvard, for example, included 80 of the most experienced
2 professionals across the globe from China and from
3 Singapore, as well as from the FDA, from United States FDA,
4 United States Department of Agriculture, CDC, others that
5 were coming to the class to learn how to communicate,
6 whether it was a nuclear reactor, poor outcomes, or it was a
7 matter of other disasters in public health across the globe
8 that they would want to know what are the key elements of
9 communication, and this communication especially with
10 disasters. Similarly, at Hopkins I taught specific case
11 studies.

12 In addition to that, I've taught classes and courses in
13 epidemiology, biostatistics at West Virginia University
14 School of Medicine as well as School of Public Health.

15 I have also held the Chair of the, position of the
16 Dean's Advisory Committee of the School of Public Health at
17 West Virginia University.

18 I've also taught classes at the UNC of Charleston
19 School of Pharmacy, as well as health seminars and events at
20 Marshall University, various number of public health, and
21 then given talks and lectures all over the country
22 indicating the challenges, as well as other aspects of
23 public health across West Virginia, as well as across the
24 nation and the globe. And I also am speaking
25 internationally as well.

1 **Q.** And, Doctor, have we asked you to appear today in
2 regards to your involvement in opioids within the State of
3 West Virginia?

4 **A.** Yes.

5 **Q.** And can you tell the Court what your understanding is,
6 at least today, what your involvement has been with regard
7 to opioids in West Virginia?

8 **A.** Well, when I was put on the job by the Cabinet
9 Secretary, then Karen Bowling, as well as Governor Tomblin
10 in January of 2015, it was very clear to me that the
11 priority of the State of West Virginia to address, the top
12 priorities are opioids, opioids and opioids.

13 **Q.** Doctor, I'll try to walk through that as well, but I
14 wanted to make sure we were talking about the subject matter
15 of the case today as well.

16 I think it's important -- we're talking about public
17 health, and we'll be talking about public health as it
18 pertains to the opioids with that too, but I think it would
19 help the Court to understand. What is public health
20 generally speaking?

21 **A.** So public health is fundamentally the art and science
22 of designing strategies, actions, aspects that help lead to
23 the prevention of disease, promotion of health, as well as
24 those strategies ultimately that would provide high quality
25 both prevention, surveillance, and treatment in terms of

1 addressing both the long-term contemporary -- long-term
2 public health problems as well as the most pressing
3 contemporary public health problems in a broad definition.

4 **Q.** And I'm going to just for the court reporter say too --
5 we have someone taking this down as well. So sometimes if
6 we can -- I'm guilty of that as well, talking fast.

7 What are some of the goals of public health?

8 **A.** Well, clearly, in the prevention space, the goal is in
9 terms of preventing disease from happening in the first
10 place.

11 So prevention becomes key strategy. So if you look at,
12 for example, 100 years in the United States from 1900 to
13 2000, an average person who was born in 1900 -- I'll
14 simplify it this way. There was an average life expectancy
15 of 45 years if you were born in 1900. In 2000 your average
16 life expectancy was about 75 years, give or take.

17 So the question is: How did we in the United States
18 get 30 years of life expectancy in 100 years? And that's
19 important to ask because, because this particular crisis,
20 our life expectancy is apt to go down for the first time in
21 the history of the country.

22 So when scientists, we look back, 25 of those 30 years
23 is because of public health interventions, things like DUI
24 laws, seat belt safety, clean water, sanitation,
25 immunizations.

1 Those are the kinds of things as opposed to specific,
2 the most fancy MRI machine or laser surgery, are responsible
3 for most of the progress and development in this country
4 from the aspect of public health. But that goes, speaks to
5 the prevention aspects.

6 Now, within prevention, we try to do all levels of
7 prevention. So there's obviously prevention of disease, but
8 then if someone ends up having a stroke, for example, or
9 having a substance use disorder, for example, they're
10 secondary and tertiary to that. You have them -- prevent
11 them from having other diseases. So that's prevention.

12 You also do a certain aspect, what we call
13 surveillance. So that's monitoring of disease conditions
14 across the community.

15 In a doctor's office, you have a doctor and a patient.
16 In public health, your patient is the community. And that
17 community can be, for a local health department, Kanawha
18 County or Putnam County. In a state, it's the state. In a
19 nation, it's the country.

20 So that's your community and you're the physician
21 basically as a public health expert.

22 **Q.** So let me make sure I'm right. So this is not an
23 individual issue. This is a public health matter. And if
24 you could tell me what the difference is because you do
25 treat patients as well. What is the difference between an

1 individual versus a community-based public health?

2 **A.** Certainly. So what we have learned over the last 20,
3 30 years potentially is that only about 10 to 20 percent of
4 your health is defined by the individual doctor/patient,
5 within the four walls of the doctor's office or the
6 hospital.

7 Up to 80 to 90 percent of the health is defined by
8 factors beyond that, meaning where you're born, where you
9 live, where you learn, where you worship, where you work.
10 All those things are called social determinates of health.

11 And those are community factors that are -- apparently
12 turns out have more to do with public health and the health
13 of individuals and community than actually the clinical care
14 and the medical care you're getting.

15 That's actually what inspired me to enter public health
16 at a very young age in my career because there's a lot more
17 we can do by helping community health. And each one is
18 important and significant, but public health is really about
19 the health of the community you're serving.

20 But the principles more or less remain the same because
21 you want to do diagnosis of the community. You want to do
22 surveillance of these conditions. And you want to do
23 treatment of that community.

24 So all of that from prevention, early intervention,
25 treatment, to recovery, all these aspects that you do for

1 individuals more or less you apply to a community setting.

2 **Q.** Doctor, as your work as a public health official, how
3 do you know what is impacting a community from a public
4 health standpoint?

5 **A.** So there's a number of things we do in terms of
6 intervention or surveillance activity in public health that
7 are consistent across the country. I work with, you know,
8 49 other commissioners.

9 One of those things is conducting regular and routine
10 surveys. So if you look at Americans' health rankings or
11 you look at, you know, all this data, where do you get those
12 data that CDC has? That data comes from the work of the
13 state and local health departments that are conducted across
14 the country.

15 One of those are called BRFSS, Behavioral Risk
16 Surveillance Survey. We do that and we submit that to the
17 CDC. At that point, you know how many fruits and vegetables
18 people are eating and if people in southern West Virginia
19 are doing better or worse than northern West Virginia or
20 other places.

21 So those are the kinds of things. That's one. There's
22 another one called YRBS. We do that in middle and high
23 school as well. So these are types of surveillance
24 activity.

25 We also do disease specific surveillance and

1 monitoring. For example, right now, you know, we would be
2 doing flu surveillance in flu season or the current
3 surveillance of COVID.

4 We, we also monitor the rates and produce reports at
5 the rates of diabetes, rates of heart disease, rates of
6 cancer, rates of arthritis across and historical things.
7 And, of course, rates of -- whatever is ailing the community
8 first and foremost, primarily what's killing and disabling
9 West Virginians. We have an obligation to look at that not
10 in terms of just what's there, but in terms of the temporal
11 things that are happening so we can better diagnose that and
12 develop an intervention that are evidence-based and help the
13 community.

14 **Q.** Doctor, do you do commission reports?

15 **A.** Yes.

16 **Q.** Do you present your findings?

17 **A.** Yes.

18 **Q.** And do you make them public?

19 **A.** Yes.

20 **Q.** And specifically in this matter to opioids with that,
21 can you -- as a Public Health Commissioner, can you tell the
22 Court specifically when a decision came about to focus on
23 opioids? I think you mentioned earlier that's one of the
24 first things you did.

25 **A.** Yeah. The decision -- so before my time, I would give

1 a lot of credit to people part of my time because there's a
2 lot of work happening in West Virginia across the years
3 because there was a tsunami of deaths and suffering that was
4 beginning and continuing to happen in the state.

5 Not only that, it was above and beyond anything else we
6 had ever seen. So I'll give you an example.

7 In 1999 the overdose death rate in West Virginia was
8 lower than the country's. And, so, when we looked at that,
9 we said, well, that's --

10 MS. MAINIGI: Objection Your Honor.

11 I apologize for interrupting, Dr. Gupta.

12 I object on the basis of foundation, Your Honor. This
13 witness has testified he arrived in West Virginia in various
14 public health roles in 2009.

15 THE COURT: Well, if you can lay a foundation for
16 how he knows, Ms. Kearse, I'll allow it. Otherwise, the
17 objection is sustained.

18 MS. KEARSE: Thank you, Your Honor.

19 BY MS. KEARSE:

20 **Q.** Dr. Gupta, when you arrived to serve the State of
21 West Virginia as a Public Health Commissioner, what did
22 you do to have an understanding of what you just talked
23 about in regards to the public health matters relating
24 to opioids in West Virginia?

25 MS. MAINIGI: And, Your Honor, just a further

1 objection which may just be a clarification of my prior
2 objection. I believe Mr. -- Dr. Gupta started as the
3 Commissioner of Kanawha County. And, so, I think his, his
4 knowledge base would be related to Kanawha County. It was
5 not until 2015 he was the State Health Commissioner.

6 THE COURT: Well, if you can lay a foundation for
7 him, Ms. Kearse. Otherwise, I'll sustain the objection.

8 MS. KEARSE: Right.

9 BY MS. KEARSE:

10 **Q.** Specifically, Doctor, when you became the Public
11 Health Commissioner of the State of West Virginia, did
12 you -- as one of your first things you testified, you
13 started looking at opioids and the community health. So
14 I want to ask you what did you do as a Public Health
15 Commissioner to identify a public issue with opioids?

16 **A.** So, Your Honor, one of the first things that a
17 Commissioner does is because it began on January 1, 2015,
18 they don't just take the ball and run with it. They have an
19 obligation to look at what's happened behind.

20 So the first thing I did was I commissioned a report
21 that looked at the historical trends of opioids from 2001 to
22 2015. And that report studied what we were going through in
23 the State of West Virginia for the last 15 years.

24 THE COURT: Do you still have an objection, Ms.
25 Mainigi?

1 MS. MAINIGI: Your Honor, I'm just waiting for the
2 next question in terms of where it might go.

3 THE COURT: Okay.

4 BY MS. KEARSE:

5 Q. We'll get to the report you mentioned, Dr. Gupta.
6 Was that a report that you yourself commissioned?

7 A. Yes.

8 Q. And was that a report that you published?

9 A. Yes.

10 Q. Made public?

11 A. Yes.

12 Q. Does that report specifically deal with opioid
13 addiction?

14 A. It deals with the historical trends of opioids from
15 2001 to 2015.

16 Q. And specifically -- let me ask you, can addiction be a
17 public health matter?

18 A. Addiction is a public health matter.

19 Q. And can you explain? How is addiction a public health
20 matter, and specifically to opioids?

21 A. Sure. So, first of all, we have to look at the
22 numbers. When I walked into the office, we were having
23 continuous year after year increase in deaths by double
24 digit percentage increases.

25 Whenever any condition is causing West Virginians to

1 die year after year by double percentage increase, that
2 issue becomes a public health matter, period.

3 So it happened to be in this case drug overdose deaths.
4 And drug overdose deaths, part of the reason -- or the
5 reason that the people were using drugs and dying of
6 overdose is because of the addiction.

7 MS. MAINIGI: Objection, Your Honor. I don't -- I
8 move to strike Mr. -- Dr. Gupta's testimony. It's not -- we
9 haven't established him as having an opinion based on
10 causation here. He's not reviewing the report and what the
11 report says.

12 I don't know how he is in a position coming in in
13 January -- in 2015 to testify as to what happened for the
14 prior 15 years. He received that information based on facts
15 that were told to him by others. And then what is in the
16 report itself would be hearsay, Your Honor.

17 THE COURT: Well, as I indicated before, I think
18 the thing for me to do is to take his testimony. You can
19 put your objections on the record and I'll try to sort it
20 all out later. That was my previous ruling and I'm going to
21 stick with that for now.

22 The record will show your objection, Ms. Mainigi.

23 MS. MAINIGI: Thank you, Your Honor.

24 BY MS. KEARSE:

25 Q. Dr. Gupta, as a public health matter, do you look

1 backwards in order to move forward?

2 **A.** Yes, Ms. Kearse, and I want to really make clear the
3 essential tenets of public health, Your Honor.

4 One of the important pieces of public health is without
5 understanding your community and what's going on, you are --
6 you cannot be effective in designing interventions to make,
7 make an impactful outcome. And part of that understanding
8 your community is going back and seeing what's happened.

9 So this would be an important piece just like someone
10 would come -- a police person would come to the scene of
11 investigation and try to understand better. That's our job
12 as public health experts; to come to a scene, understand
13 better, learn, look at the trends and data. Without those
14 trends and data, public health does not exist.

15 So it's a critical and crucial and central tenet of
16 public health to look at the trends, understand the trends,
17 and move forward. If you were to ever design an impactful
18 strategy, we cannot design one without understanding what's
19 going on in my community. I just can't do that.

20 **Q.** As Commissioner of Public Health, did you dedicate
21 significant time and resources to understand the scope and
22 investigate opioids in West Virginia?

23 **A.** Yes.

24 **Q.** And does that encompass Cabell County and City of
25 Huntington?

1 **A.** Yes.

2 MS. KEARSE: Your Honor, may I approach?

3 THE COURT: Yes.

4 BY MS. KEARSE:

5 **Q.** Dr. Gupta, you mentioned a report of 2001 to 2015.

6 I'm going to hand you what's marked as Exhibit 41213.

7 MS. KEARSE: Your Honor, may I approach and
8 provide you a copy as well?

9 THE COURT: Yes. Thank you.

10 BY MS. KEARSE:

11 **Q.** Doctor, this is the report you referenced a few
12 minutes ago about your investigation?

13 **A.** Yes.

14 **Q.** And, Doctor, did you -- I'm going to mark it 41213.
15 Was this report an investigation done in your capacity as
16 the Commissioner of Public Health for the State of West
17 Virginia?

18 **A.** Yes.

19 **Q.** And is this a, a report you both commissioned and were
20 personally involved in?

21 **A.** Yes.

22 **Q.** And was this report made public?

23 **A.** Yes.

24 **Q.** And does this report contain your various findings of
25 your investigations in the State of West Virginia with

1 opioids specifically?

2 **A.** Yes.

3 MS. KEARSE: And I've got this on the screen, Your
4 Honor.

5 BY MS. KEARSE:

6 **Q.** Can you explain briefly then, Doctor, what is
7 detailed in here? And I want to go over some of the
8 findings in here, but tell the Court about your
9 investigation and we'll go through the findings.

10 **A.** So I'll start with Page 1. And you can see at the
11 introduction it clearly states the tsunami of, of the deaths
12 that the country, as well as West Virginia, Cabell County
13 and City of Huntington were facing. So it very clearly
14 states the opioid deaths continued to surge nationally in
15 2015, surpassing 30,000 for the first time.

16 So what we -- we start with talking about the deaths
17 with opioids, with fentanyl, with heroin that are right
18 there, including a quote from the then CDC Director, Tom
19 Frieden who said, "Prescription opioid misuse and use of
20 heroin and illicitly manufactured fentanyl are intertwined
21 and deeply troubling problems. The epidemic of deaths
22 involving opioids continues to worsen," end quote.

23 **Q.** Okay. So, Dr. Gupta, I'm actually -- so the Court
24 knows where we are on that, the first page of this report
25 actually outlines some of your investigation of what has

1 been going on in regards to opioids?

2 **A.** Yes.

3 **Q.** And when you mentioned there the intertwining,
4 prescription opioid misuse and heroin and illicitly
5 manufactured fentanyl are intertwined and deeply troubling,
6 did you investigate that as part of your investigation as
7 the Commissioner of Public Health?

8 **A.** Yes. This -- the report was the first step in the
9 investigation.

10 **Q.** And, Dr. Gupta, Figure 1, is this -- it's entitled "How
11 the Epidemic of Drug Overdose Deaths Rippled Across
12 America." Is that part of your investigation that you did
13 in order to publish this 2001 and 2015 report?

14 **A.** This is actually from a *New York Times* investigation.
15 But we found our numbers in West Virginia to be very
16 similar, so we put this out because this demonstrates -- the
17 importance of this picture is it demonstrates that all the
18 way through 2003, if you look at the first picture of the
19 United States, West Virginia was the canary in the coal
20 mine.

21 So because it began in West Virginia in 2003 -- and you
22 can see the entire country literally began after that to
23 burn from opioids. So this is the overdose deaths across
24 the country in a span of 2003 to 2014. And you can see all
25 the red that's spread from West Virginia and some parts of

1 the West Coast across the entire country is, is -- pretty
2 much explains the problem in a snapshot.

3 MR. HESTER: May I object, Your Honor, --

4 THE COURT: Yes.

5 MR. HESTER: -- and move to strike the witness's
6 last answer on the basis that he's simply reporting on
7 hearsay taken out of the *New York Times*.

8 MS. KEARSE: Your Honor, I think he testified that
9 he did this in his capacity as an investigation.

10 MR. HESTER: Well, it's sourced, Your Honor, out
11 of the *New York Times*. So the witness is reporting on
12 something that's stated in the *New York Times*. It's
13 hearsay.

14 MS. KEARSE: Your Honor, I believe he's
15 testified --

16 THE COURT: Can you respond to that?

17 MS. KEARSE: Yes. He's testified -- and I can ask
18 other questions on that. He testified he went back when he
19 studied the origins of the opioid epidemic to understand how
20 it's impacted West Virginia.

21 Is that correct?

22 THE WITNESS: Yeah. What I'm saying is this
23 report has the name of Governor Justice on it and this was
24 done as a government report.

25 THE COURT: Just a minute.

1 Mr. Hester.

2 MR. HESTER: Your Honor, I simply want to make
3 clear we understand that Dr. Gupta's name is on the report,
4 but he can't recite hearsay within the report as a statement
5 of fact. He's -- it's hearsay within the report. So this
6 is an example I think. It's sourced out of the newspaper.

7 MS. KEARSE: Your Honor, this is a published
8 government report on behalf of the State of West Virginia
9 that Dr. Gupta commissioned and was personally involved in
10 and collected information specific to the investigation that
11 he's testifying about now.

12 THE COURT: What about the hearsay within hearsay?
13 The public records exception might get you over the first
14 hurdle, but what about the fact that the *New York Times*
15 report is itself hearsay?

16 MS. KEARSE: I believe the *New York Times* report
17 is still a public record. It's a public newspaper that has
18 put this information out. And it's sourced -- I can ask --
19 BY MS. KEARSE:

20 **Q.** Do you know what the sources are for these?

21 **A.** We put it in here because we verified this to be
22 accurate in our sources.

23 THE COURT: I'm going to allow him to testify,
24 Mr. Hester. Your objection will be preserved for the record
25 loud and clear and we'll see where this goes.

1 MR. HESTER: Thank you, Your Honor.

2 BY MS. KEARSE:

3 Q. Dr. Gupta, I'm going to get to the specifics on
4 here, but did your report investigate going backwards
5 the origins of the opioid epidemic?

6 A. It did.

7 Q. And did you report that in this report that is a public
8 record on behalf of the State of West Virginia?

9 A. Yes.

10 Q. Did you look into the overdose rates in West Virginia
11 specifically in this report?

12 A. We did.

13 Q. And if you can tell the Court -- the report is titled
14 2001 to 2015. What was involved in your investigation
15 that -- we'll go through your findings -- that allowed you
16 to issue a report on the West Virginia drug overdose deaths
17 historical overview from 2001 to 2015, if you can explain
18 what the investigation entailed?

19 A. So we, we -- the Health Statistics Center, which is
20 within the Bureau of Public Health, maintains the birth,
21 death, marriage, other vital records at the state's place
22 where all the vital records are held.

23 We utilized the, the Health Statistics Center data,
24 matched it up with the Office of the Chief Medical Examiner.
25 In West Virginia we have a centralized Chief Medical

1 Examiner's Office, so we were able to see both the deaths
2 and verify the overdose deaths from the Health Statistics
3 Center with the Office of the Chief Medical Examiner, as
4 well as verify the details of all those deaths in terms of
5 what they were from going all the way back to 2001 in the
6 Office of the Chief Medical Examiner.

7 So it entailed pulling a number of aspects of data from
8 both of those. And then there was some other information
9 that was made available from the DHHR's Bureau for
10 Behavioral Health and Health Facilities that was also part
11 of the epidemiological profile.

12 **Q.** As part of this report and your understanding of the
13 epidemic in West Virginia, did you conduct town halls as
14 well?

15 **A.** It was not part of this report, what we did at town
16 halls.

17 **Q.** Okay. Dr. Gupta, in relation to Figure No. 2, can you
18 tell the Court what Figure No. 2 represents and is it
19 similar to what you just testified about? I want to make
20 sure we're clear on the overdose --

21 MS. MAINIGI: Objection, Your Honor.

22 Your Honor, I have a relevance objection here. This
23 entire report and this specific question relates to West
24 Virginia. Our case is obviously about Cabell County and
25 Huntington.

1 I think it would be improper for this witness to be
2 introducing testimony via this report or otherwise about
3 West Virginia at large without any specific focus on Cabell
4 and Huntington.

5 I also don't think the proper foundation has been laid
6 at this point in time for Dr. Gupta to testify about the
7 report. He keeps referring to "we" and so forth. He has
8 not told us what he specifically did with respect to any of
9 the data and analysis that underlies the report.

10 THE COURT: Ms. Kearse, do you want to reply to
11 that?

12 MS. KEARSE: Sure. Your Honor, Dr. Gupta -- may I
13 ask a follow-up question with Dr. Gupta or specifically to
14 Your Honor with that?

15 THE COURT: Let me --

16 MS. KEARSE: I think I can clarify that particular
17 question about --

18 THE COURT: Well, let's address the objection that
19 it covers a broader geographical area than the area in this
20 trial.

21 MS. KEARSE: Yes, Your Honor.

22 This deals with the State of West Virginia, but it's
23 also relevant to his testimony about the City of Huntington
24 and Cabell County.

25 And specifically within the report there are sections

1 that are specific to Cabell County and City of Huntington
2 and various graphs through here about the overdose rates and
3 other statistical information he put together. I can go
4 over the -- there are several figures that are specific to
5 Cabell County.

6 THE COURT: Well, I think the whole view of the
7 whole situation in West Virginia is relevant to what
8 happened in, in Cabell and Huntington. It's helpful
9 background at least for that, and I'll overrule that
10 objection.

11 Now, what about the fact that you haven't laid a proper
12 foundation for this?

13 MS. KEARSE: I believe I have, Your Honor, but
14 I'll go through it again as well.

15 BY MS. KEARSE:

16 **Q.** So I believe we've identified Exhibit Number 41213.
17 And this is an investigation that you have conducted as
18 the Commissioner of Public Health.

19 Can you explain to the Court your specific involvement
20 in both commissioning this report and putting this as a
21 public document?

22 **A.** So, Your Honor, the term "Commissioner" comes from the,
23 first and foremost, ability to be able to commission
24 reports. So that was my first and foremost job is to be
25 able to analyze a problem as the commissioned state health

1 officer of the State of West Virginia, and then be able to
2 commission the relevant reports that I needed as tools in my
3 toolbox in order to start addressing the problem.

4 So this report which I oversaw, I, I designed, created
5 the methodology, helped create the methodology and
6 obviously, you know, asked my staff and other experts to
7 create. I commissioned this report in my capacity as the
8 Commissioner of the Bureau of Public Health.

9 THE COURT: So this report was authorized by
10 appropriate authorities and you --because of the
11 authorization, you had a duty to do this investigation and
12 make this report. Is that correct?

13 THE WITNESS: Yes, Your Honor, I authorized the
14 report. I commissioned the report. And I supervised the
15 report. I developed the methodology for the report. I
16 coordinated the individual offices within the Bureau of
17 Public Health and outside of the Bureau of Public Health to
18 ensure that all of the conditions were met in order for this
19 work to be done.

20 I also authorized the resources that were needed, Your
21 Honor, in a government agency as the chief fiscal officer of
22 this large agency. I have responsibility to ensure that we
23 were using our resources appropriately. This report
24 required resources and I was the authorizing authority of
25 resources for this report.

1 THE COURT: Okay. And what office did you occupy
2 while you were making this report? Tell me that again.
3 You've already said it but --

4 THE WITNESS: Yes, Your Honor. I was the
5 Commissioner for the Bureau of Public Health, State Health
6 Officer.

7 THE COURT: And you made this report pursuant to
8 your duties attendant to that office?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Overruled. I'm going to admit it.

11 MS. KEARSE: Your Honor, I've put it on the
12 screen. The cover page is within there as well that shows
13 Dr. Gupta in his position as the Commissioner for the Bureau
14 of Public Health, State Health Officer on that.

15 BY MS. KEARSE:

16 **Q.** Dr. Gupta, can you tell the Court your specific
17 steps that you took in issuing this report? And then
18 we'll go through some of the findings of this report.

19 **A.** Sure. So one of the first things, Your Honor, as I had
20 mentioned, in January of 2015 coming into the office where
21 we were seeing these deaths rise continuously, we wanted to
22 understand and get a better assessment of what's happening
23 in the State of West Virginia with regard to drug overdose
24 deaths. We had to have a better comprehensive
25 understanding. I had a mandate from both the Cabinet

1 Secretary and the Governor at the time to be able to do
2 this.

3 So I, you know, authorized and commissioned and put the
4 adequate resources, both in human capital as well as
5 financial resources, office, taxpayers of the State of West
6 Virginia to create this report.

7 **Q.** And does this report, then, reflect your findings of
8 that investigation?

9 **A.** It does.

10 **Q.** And does this report go in detail into various subject
11 matters that relate to opioid overdoses and addiction?

12 **A.** It does it in a more comprehensive manner that it had
13 been prior available.

14 **Q.** And can you tell the Court some of your specific
15 findings in regards to your review, your historical review
16 from 2001 from 2015?

17 **A.** Yes. So one of the striking things we found was, Your
18 Honor, that compared from 2001 to 2014, that was the
19 duration of this report for this purpose, the drug -- the
20 West Virginia drug overdose deaths spiked not just high, but
21 several folds higher than the United States average.

22 So, for example, there were in 2001 6.8 Americans per
23 100,000 dying of overdose deaths in the United States. And
24 there were 11.5 West Virginians dying for the same
25 conditions. That's about twice as much.

1 Now, by 2014, the 6.8 Americans went to 14.7. But for
2 West Virginia, the 11.5 number went to 35. So we had
3 five -- I'm sorry. We had more than twice -- about two and
4 a half times increase.

5 If you look at the rate of increase, it's much -- the
6 slope is much steeper in West Virginia than was happening
7 for the rest of the country. We were the ground zero at the
8 time during these years.

9 Now, the other thing we found compellingly interesting
10 is with each decedent, we do autopsy. We also conduct the
11 number of controlled substances in their body.

12 And what we found in Figure 2, as you can see, for each
13 year the controlled substances --

14 **Q.** I'll put Figure 2 up for the Court.

15 **A.** What we can see is they're using an average of 2.3
16 controlled substances or substances in their body. And it
17 went up all the way to three and a half. That means not
18 only were they dying from overdose, but they were doing a
19 lot of combination drugs as well.

20 So that's between Figure 2 and Figure 3. I can
21 continue to go on if you like me to.

22 **Q.** Let me, let me -- so as part of your investigation, did
23 you seek to find the reasons why you were having overdose
24 deaths and -- from your report?

25 **A.** So, clearly, if, if you look at Table 1, Table 1 is on

1 Page 8 at the bottom. It starts to look at -- and, you
2 know, we have one of the most effective Chief Medical
3 Examiner's offices in the nation.

4 And one of the things you'll see here is from 2001 to
5 2015 across and from top to bottom is the drugs that they're
6 dying of.

7 So you can see at the end in 2015, for example, from
8 hydrocodone there were 113 deaths. From oxycodone there
9 were 182 deaths. From fentanyl there were 180 deaths. From
10 heroin there were 201 deaths. But, remember, these were
11 overlaps. So if you add them all up, they will not just
12 add -- you know, there could be more or less.

13 But what we find is basically if you look at the total
14 record, at least one opioid at the bottom, the last, the
15 bottom row, there is at least one opioid.

16 So there were 636. And there was 554 in 2014. So if
17 you -- there were a total of 638 deaths in 2015 that had at
18 least one opioid in the system.

19 **Q.** And it looks like a total of 6,001, at least one opioid
20 from that time period from 2001 to 2015?

21 **A.** Yes. So six -- over 6,000. So 6,001 West Virginians
22 perished which had -- between 2001 and '15 which had at
23 least one opioid in their system.

24 **Q.** And why is that important, Doctor, to your
25 investigation?

1 **A.** That's --

2 MS. MAINIGI: Objection, Your Honor. I think we
3 went down this road as it relates to causation. This
4 report, Your Honor, does not draw any conclusions related to
5 causation or conclusions about how things got where they
6 got.

7 But I do not think that, that Dr. Gupta is going to
8 testify as to any causation issues involved here based on
9 the report at least.

10 THE COURT: Well, you're not asking him about
11 causation now, are you?

12 MS. KEARSE: Not now, Your Honor, no. I'm asking
13 him for the specific findings of this report.

14 THE COURT: I don't understand the objection.

15 MS. MAINIGI: Your Honor, there was a question a
16 couple of questions ago that was leading into causation, so
17 it seemed like we were headed back in that direction. So
18 perhaps my objection is a question early, Your Honor, but I
19 continue forward with the objection.

20 THE COURT: All right. Overruled and we'll see
21 where it goes. I'll probably hear it again.

22 Go ahead, Ms. Kearse.

23 BY MS. KEARSE:

24 **Q.** Dr. Gupta, you mentioned Figure 3 to the Court as
25 well. I just wanted to make sure you had the

1 opportunity -- you mentioned it there. But can you
2 explain your reference to Figure 3 in regards to your
3 investigation and the importance to your findings?

4 **A.** Yes, Your Honor. I think the Figure 3 when we look at
5 this, the blue line is West Virginians being perished
6 because of overdose deaths, and the red line is the United
7 States.

8 What is the most striking is in those years between
9 2001 and 2014 did we not only keep up with the rate of
10 Americans perishing because of overdose deaths and historic
11 high levels, but we super-succeeded those numbers.

12 So we here in West Virginia were drowning in these
13 deaths as opposed to the rest of the country. We were
14 ground zero.

15 **Q.** Dr. Gupta, when you went through your investigation,
16 did you also look for various other types of information or
17 what the data was -- what was the data reflecting in other
18 areas in regards to your review from the 2001 and 2015 data?

19 **A.** So there was some, across the time period, some, some
20 really clear data that is -- that's disturbing, truly
21 disturbing beyond this.

22 Your Honor, one of the things that was very disturbing
23 was that the majority of West Virginians that were perishing
24 because of this were actually the working age West
25 Virginians. They were between the ages of 25 and 54.

1 So as opposed to -- you know, you would expect a
2 different age group. These were the hard-working West
3 Virginians that were being impacted in the prime of their
4 life and they were the ones that were dying. So that was,
5 to us, quite impactful.

6 **Q.** Doctor, did you also look into the county level data to
7 issue some of your findings in this report?

8 **A.** Yes. So we looked at especially the highest level of
9 counties that were being negatively impacted through the
10 deaths. And clearly beyond Kanawha, Cabell was the one that
11 had suffered the most deaths in that -- from opioid related
12 overdoses in the State of West Virginia between 2001 and
13 2015.

14 **Q.** Does Figure 7 reflect that finding?

15 **A.** It does.

16 **Q.** And can you tell this Court -- let me go back to Figure
17 6 on this report. Is that, is that what we just looked at
18 in regards to the death certificates and the 6,001 drug
19 overdose deaths?

20 THE COURT: Now you're talking about total deaths?
21 Because those two counties have the highest population, I
22 think, of any county in the state. Right?

23 THE WITNESS: Your Honor, actually, Berkeley
24 probably has one, but Berkeley was also amongst that. So
25 the total deaths would be those, yes, Your Honor.

1 THE COURT: So the size of the community would
2 impact the total number of deaths obviously.

3 THE WITNESS: Yes, Your Honor. And within, Your
4 Honor, various counties, of course, from Cabell to south
5 West Virginia, southern West Virginia, the rate was a lot
6 higher per capita of deaths than it was some of the other
7 northern and eastern panhandle.

8 THE COURT: That was my next question. Thank you.

9 BY MS. KEARSE:

10 Q. I'm going back to Figure No. 7. And would you just
11 explain that?

12 A. That's exactly -- so what we're seeing here is Kanawha
13 County 713 deaths from 2001 to 2015 because of opioid
14 related overdoses.

15 Then the next one on there is obviously Cabell County
16 and then -- well, it's -- yeah, Cabell County. And then,
17 obviously, we see a lot more happening in both southern West
18 Virginia. And the one in Berkeley County is primarily, of
19 course, the population factor comes in as well.

20 Q. And, Dr. Gupta, you mentioned you, you looked into the,
21 the age range. And I just want to reflect on Figure No. 8.
22 Is that your -- reflective of your testimony about looking
23 at the age in regards to your findings in these studies?

24 A. Yeah. And, and really that was, as I mentioned, one of
25 the heartbreaking aspects of this particular epidemic in the

1 State of West Virginia is the, the type -- the people that
2 are being consumed by it is the average working age West
3 Virginians in the prime of their life. So we're talking
4 about between 25 and 54 years of age, especially between 35
5 and 54 years of age that perished and the highest numbers.

6 **Q.** And it also reflects all ages, as well, as dying from
7 overdose?

8 **A.** It does. And this is the kind of data that gives us
9 both information from a public health perspective, but also
10 starts to distinguish this from perhaps previous epidemics
11 or previous aspects.

12 So, you know, we look at historic trends. We look at
13 current trends. And we can predict what -- is there a
14 relationship previous and current trends or not. So this
15 type of information was -- had a lot of importance to it.

16 **Q.** Doctor, did you also look into some specific types of
17 drugs within your investigation, specifically oxycodone,
18 hydrocodone?

19 **A.** Yes. That's in Table 1 as we just went over that.

20 **Q.** And if you'll turn to Figure 12 -- we'll start with
21 Figure No. 11.

22 **A.** Uh-huh, yes.

23 **Q.** Can you tell the Court in regards to your findings in
24 your investigation, what's the significance of Figure 11?

25 **A.** In Figure 11 we looked at the oxycodone related

1 overdose deaths, specifically by age in the State of West
2 Virginia from 2012 to 2015. The total number of people that
3 died was about 765.

4 Of those people, we build a spread according to age.
5 And, once again, what we see is the most number of people in
6 age group was 45 to 54 years of age that died followed by 35
7 to 44 year range. And that pretty much matched up with the
8 entire spectrum as well.

9 **Q.** Figure 12 is a reflection of that data as well?

10 **A.** Yes. The above figure was who and this is where.

11 **Q.** Okay.

12 **A.** And this figure clearly shows Kanawha County and Cabell
13 County numbers as well.

14 **Q.** And, and why was the investigation -- why did you
15 include oxycodone related overdose deaths in your report?

16 **A.** So if you go back to Table 1, you will see that
17 oxycodone and heroin and fentanyl are the most common types
18 found in people dying. So you can see clearly when you look
19 at fentanyl that's often mixed up with heroin, those
20 numbers, as well as oxycodone, they are amongst the numbers
21 that have the -- we found to be highest in people dying.

22 So it's important that we start to do a little deep
23 dive into ones that you're finding the highest numbers of
24 versus low numbers of.

25 So you'll see we've done the same deep dive for heroin.

1 We've also done, you know -- so then you -- this is public
2 health. So one of the first things you do is you find where
3 the most of the deaths are happening and you start to hone
4 down on those deaths.

5 **Q.** And are you referring to the -- I'm going to point to
6 Figures 13 and 14 regarding the heroin related overdose
7 deaths. Is this what you're referring to?

8 **A.** Yes, I am.

9 **Q.** And can you explain to the Court what Figure 13, heroin
10 related overdose deaths, what the significance of that is in
11 your investigation?

12 **A.** So because we found heroin to be a major, major player
13 in the deaths of West Virginians, we also wanted to know how
14 is it trending over the years. It was very important for us
15 to look at the trends. And that's why we go back
16 historically.

17 So what we found, according to Figure 13, is basically
18 if you look at that, the blue box is the total of heroin
19 related overdose deaths in West Virginia between 2001 and
20 2015. The orange is men and, and yellow is women.

21 What you can clearly see is it started to spike quite
22 significantly from 2012 onward. So 2012 we had 67 deaths
23 from heroin predominantly. And in 2013 they just spiked
24 several fold.

25 And that was important for us to know because we want

1 to know when the State of West Virginia and similarly
2 situated Cabell County and City of Huntington started to see
3 the onslaught of the heroin come into versus not.

4 **Q.** So these are the facts that you're finding and then
5 we'll deal with the why later. But is this leading up to
6 the finding what you're doing as to then why it's happening?

7 **A.** Yes, for --

8 MS. MAINIGI: Objection, Your Honor.

9 THE COURT: Just a minute.

10 MS. MAINIGI: Objection, Your Honor, leading.

11 Ms. Kearse is testifying.

12 MS. KEARSE: We can come back to that, Your Honor.

13 THE COURT: You can rephrase your question. I'll
14 sustain the objection.

15 MS. KEARSE: Yes, Your Honor.

16 BY MS. KEARSE:

17 **Q.** Is Figure 14 a follow-up from Figure 13 in regards
18 to the heroin related overdose deaths?

19 **A.** So Figure 13 that we had up before signified a very
20 important transition from 2012 to 2013. That was the
21 sentinel time, the sentinel time where we saw a spike in
22 heroin deaths. And that's the significance of that.

23 Now, Figure 14 starts to talk about again from who to
24 where. And you can start to see now again Kanawha and
25 Cabell, with a significant predominance in Cabell compared

1 to Kanawha, of heroin related overdose deaths in West
2 Virginia from 2011 to 2015. Remember, these are 2011 to
3 2015.

4 In the bottom actually you can see the number of the
5 total deaths. So Berkeley, Cabell, and Kanawha County we
6 had about 631 deaths.

7 **Q.** Did you also go a little deeper and look into specific
8 zip codes and areas within your reports in Figure 15? 15
9 and 16, if you can explain the significance of those
10 findings to this Court.

11 **A.** So I mentioned why it was important in previous Figure
12 13, that transition from 2012 to 2013. Now with a very
13 similar pattern, we're now starting to hone down between
14 2012 and '15. So we start to focus, focus, focus until we
15 get there.

16 So now we've found that a-ha. We have that a-ha moment
17 that something happened from 2012 to 2013 in the State of
18 West Virginia where suddenly the heroin deaths started to
19 spike and we wanted to understand that better.

20 What is that that happened? How closely can we get to
21 understand what happened using the public health tools?

22 And that's where we go to Figure 15 and Figure -- and
23 try to see that from a zip code standpoint. This is
24 exclusively from 2012 to '15. And we can see the red means
25 that obviously there are more heroin overdose deaths in that

1 zip code.

2 **Q.** And Figure 16, Dr. Gupta, what is the importance of
3 Figure 16?

4 **A.** So this is once again the county level distribution of
5 heroin related overdose deaths in West Virginia. So this
6 again goes back to 2001 to 2015.

7 And, so, if you look at the 2001 to 2015 in Cabell
8 County from heroin, those are -- that number is 163.

9 But if you look at from 2011 to 2015, Figure 14, that
10 number is 142. So that 142, so that means that there were
11 only 21 deaths from heroin that happened between 2001 and
12 2011 in Cabell County.

13 **Q.** Figure 17. That's specific to 2015?

14 **A.** Yes. So the reason that is specific to, to 2015 and
15 the only red county there in that whole map of the State of
16 West Virginia is Cabell. And the reason it's red is because
17 it is above -- the rate there is above and beyond anything
18 imaginable that we can see.

19 So we're seeing in 2015 it really shot up in Cabell
20 County. But others were becoming orange too. So you can
21 see almost what's coming. It's coming. You can see it. It
22 hit Cabell. It's going to hit other places.

23 **Q.** And I want to talk about some other data points there
24 that are specific to Cabell County. I'd like to point your
25 attention to Figure 22. And if you can explain to the Court

1 what is significant about your findings from the
2 investigations in regard to Figure 22, county level
3 distribution of fentanyl related overdose deaths in West
4 Virginia.

5 **A.** So the Figure 22 now talks about the other piece we
6 had. Remember in Table 1 we saw overdose deaths happening
7 from heroin predominantly, fentanyl, and oxycodone. And now
8 we want to understand the pattern of those deaths over the
9 years.

10 So we've talked about oxycodone. We've talked about
11 heroin. Now we're talking about fentanyl related deaths.

12 So fentanyl, as the Court is well aware, is, is often
13 times not used solely and easier, but it's used to cut
14 heroin. And it is something that the person that is using
15 it often is not aware that their heroin may have been cut.
16 And it's basically Russian roulette every time you use
17 heroin. You might make it, you might not make it because of
18 fentanyl.

19 So one of the things we found in Figure 22 is we looked
20 at the fentanyl related overdose deaths in West Virginia
21 from 2001 to 2015. We found that the fentanyl related
22 deaths are happening again predominantly in Kanawha County
23 and Cabell County.

24 **Q.** And I'll finish up with Figure No. 23. Is that again
25 going back to the, the "where"?

1 **A.** Yeah. So in Figure 23 is clearly that 41.3 percent of
2 fentanyl related deaths were happening in Cabell County. So
3 of those happening, a majority of those were happening in
4 Cabell County as opposed to other, other counties.

5 **Q.** So, Doctor, I want to make clear -- and if there's
6 anything else within this report you think is significant to
7 your testimony, I certainly don't want to cut it off. I
8 think we've covered a lot of ground with this report. And I
9 want to just ask a question. Again, why did you do this
10 report and investigation?

11 **A.** Your Honor, this was -- this report -- as we went
12 through, you can understand. Once, once I come in and I
13 have this report and I understand it, it helps me understand
14 better and make sure that we're putting resources where they
15 need to be put in order to, you know, address this tsunami
16 and this flood.

17 So our communities when I came into the office were
18 being flooded by deaths, flooded by prescriptions, flooded
19 by other aspects we didn't even know about. I -- it was
20 very important for me to be able to do my job that I
21 understood better what was happening in those communities
22 and where it was happening more and where it was about to
23 happen.

24 So the, the strategy that I would adopt and gage what
25 was happening now is going to be quite different from the

1 strategy that I work to prevent the next one from happening.

2 So it helps -- it informs me. It informs my office.

3 It informs the State of West Virginia, the Governor of West
4 Virginia as to where we need to go next. And it helps us
5 inform the feds actually as to what's happening in West
6 Virginia.

7 So we're part of the large system and it helps us do
8 our, sort of play our role in order to address the issue.

9 **Q.** And after this report, what did you do? What did you
10 do with this data?

11 **A.** So, you know, obviously no one report is ever all
12 inclusive of all information. So this report was very
13 important. Now we've got dead people. They're still dead.

14 So the next thing for us to do was: Why is this
15 happening and what are the relationships? We wanted to
16 understand better and learn from our dead so we can help the
17 living.

18 And one of the things that happened when I came in 2015
19 and in 2016 I began to see there's like literally a
20 20 percent increase in deaths.

21 So imagine yourself, Your Honor, sitting in the
22 Commissioner's position and people are dying on the streets.
23 Not only are they dying, but we're getting double digit
24 increases every, ever year. And the country's focus is on
25 you to be able to do something about it.

1 And that was the position I was in and a lot of my
2 colleagues were in in the State of West Virginia. So we had
3 to do things more creative, more innovative, things that
4 haven't been done before anywhere in the country in that
5 way.

6 So one of the things I did was I commissioned a Social
7 Autopsy report to understand better and learn from people
8 who had already died. If we had -- if we do not -- we could
9 not help people, then we've got to understand from the
10 deaths so we can learn better and implement better
11 strategies in the future.

12 So I commissioned a report. One of the things I did
13 was commissioned a report called Social Autopsy.

14 **Q.** Okay. We're going to get to that and I'm going -- I
15 want to finish out this report and then -- did your
16 investigation also highlight some other issues that you need
17 to address from a public health standpoint, and specifically
18 looking at Page 24?

19 **A.** Yeah. So one thing that was very clear becoming to us,
20 we talked about addiction as a public health issue. What
21 happens with addiction is not just the individual as opposed
22 to somebody getting pneumonia or a worker's injury.

23 So we, we have a lot of coal mines in West Virginia and
24 it's important for us to understand that. We have a lot
25 of -- historically, there are tragedies that happen. When

1 that happens, our communities come together and, and we
2 mourn. That's what happens. But at the end of the day,
3 that family is who's affected the most.

4 That's not the case with addiction. With addiction
5 what happens is the individual, it's their health. It's
6 their family. It's their neighbors. It's their community.
7 It's the economics of the community. And it's everything
8 that happens.

9 The one thing we found out was -- what was important
10 for us was that we were seeing a lot more of these pills in
11 schools. So what was happening was there's a free-flow of
12 the, the, the pills in elementary and middle and high
13 schools.

14 We knew that this was an issue that we had to address
15 in schools, an issue we have to address at work, issues that
16 we have to address in jobs, issue we have to address in
17 communities, no matter where you look.

18 So we started to work with various aspects of partners
19 and started developing partnerships. I came in and one of
20 the first things I had to do was start to develop
21 relationships with our education, our Department of Military
22 Affairs and Public Safety, Board of Pharmacy, you know,
23 other aspects of DHHR. All of these people or agencies was
24 important.

25 The other thing that was happening was, especially with

1 heroin and fentanyl we talked about, as opposed to popping a
2 pill, you inject heroin. When you inject heroin, you share
3 needles. When you share needles, then you also share
4 diseases. Some of these are deadly diseases like HIV,
5 Hepatitis B, Hepatitis C.

6 So one of the fears I had in 2015 is if we are, and we
7 were, seeing this increasing rates of heroin and fentanyl
8 use and transition, then we're also going to be seeing a lot
9 more cases of HIV, a lot more cases of hepatitis. And
10 that's really troubling because now we're going to another
11 phase of this illness where people are going to be left with
12 not only a really difficult to treat life-long disease, but
13 the potential to spread it to other people easily.

14 **Q.** And, Dr. Gupta, in your role as Commissioner of Public
15 Health, did you look into those matters as well?

16 **A.** Yes.

17 MS. KEARSE: Your Honor, I'd like to go ahead and
18 switch to another document, but go ahead and move this into
19 evidence.

20 THE COURT: Yes.

21 MS. MAINIGI: Your Honor, I object. The report is
22 hearsay within hearsay. And I also have a relevance
23 objection based on geographic scope.

24 THE COURT: What is this?

25 MS. KEARSE: Your Honor, I'm just moving this into

1 evidence.

2 THE COURT: Moving this report into evidence?

3 MS. KEARSE: Yes, yes. It's the document we just
4 talked about with respect to Cabell County and Huntington.

5 THE COURT: I thought I already admitted it. It's
6 admitted.

7 Your objection is preserved for the record, Ms.
8 Mainigi.

9 MS. MAINIGI: Thank you, Your Honor.

10 BY MS. KEARSE:

11 **Q.** Dr. Gupta, you just referred to something as a
12 Social Autopsy, but I want to be specific in what you're
13 referring to so that we can look at that report. Can
14 you tell the Court specifically -- let me get the
15 document.

16 MS. KEARSE: Your Honor, may I approach?

17 THE COURT: Yes, you may.

18 BY MS. KEARSE:

19 **Q.** Dr. Gupta, I'm handing you what we've marked as
20 Exhibit Number 44211. Can you identify that document
21 for the Court?

22 **A.** Me?

23 **Q.** Yes, sir.

24 **A.** This is the 2016 West Virginia Overdose Fatality
25 Analysis otherwise known as the Social Autopsy report.

1 **Q.** And, Dr. Gupta, did you perform -- let me go ahead and
2 put -- on the second page of this report you're serving as
3 the Commissioner of Public Health for the State of West
4 Virginia?

5 **A.** Yes.

6 **Q.** And did you conduct and authorize an investigation and
7 submit your findings in this 2016 West Virginia Overdose
8 Fatality Analysis?

9 **A.** Yes.

10 **Q.** And is this a document and now is a public record?

11 **A.** Yes.

12 **Q.** And this document details your findings and your
13 investigation?

14 **A.** Yes.

15 **Q.** Can you explain to the Court what was involved in your
16 investigation into this report titled 2016 West Virginia
17 Overdose Fatality Analysis? And start with the "why" and
18 "how" --

19 **A.** Yes.

20 **Q.** -- it was done.

21 **A.** So as I mentioned, Your Honor, we were seeing rises in
22 overdose deaths. We were seeing that there was much more
23 use of heroin and fentanyl. We were seeing the declining
24 number of prescriptions and opioids. We wanted to know why.
25 We really wanted to understand that why is it happening that

1 these deaths are increasing in number and can we understand
2 better.

3 Now, to understand better, we had to understand people
4 who have perished. So we took all of the deaths of 2016
5 that had happened in the State of West Virginia, especially
6 the residents of West Virginia. And I asked the leaders
7 across the State of West Virginia, the government, because I
8 was the State Health Officer in addition to being the
9 Commissioner, I said, "We need to come together. We need to
10 solve this problem to understand better why people are
11 dying."

12 So we -- I asked people from the Board of Pharmacy. I
13 asked people from the Office of Chief Medical Examiner. I
14 asked people to come from State Medicaid, State Bureau of
15 Behavioral Health that took all the medications into
16 treatment programs, Department of Military Affairs and
17 Public Safety, Controlled Substances Monitoring Program.
18 And there may have been others, the EMS office, the
19 Emergency Medical Services office.

20 I said, "We all have to solve this problem. We have to
21 take a scientific approach, an evidence-based approach using
22 sound and accepted methodologies to understand what's going
23 on."

24 And, so, you can see a list on the next page is the
25 leaders across -- I, I designed a methodology. Here's what

1 we're going to do and here's how we're going to do it, and
2 commissioned this particular report, and also brought in CDC
3 by the way.

4 And this report was funded as it says here. It was
5 funded by the West Virginia and Injury Prevention Program,
6 Department of Health and Human Resources, and with a
7 cooperative agreement with the Federal Government through
8 the United States Centers for Disease Control and
9 Prevention. So this is where the resources came from to
10 build this report.

11 And, and we went on a journey with all of these
12 partners, all these experts with a collective well over 300
13 years of public health expertise. And many of those are
14 career people with Ph.D.s and Master's in public health
15 experiences to understand, analyze, determine, and inform.

16 **Q.** At your direction and your involvement, did you provide
17 an Executive Summary and your findings of your analysis and
18 investigation in regards to the, the 2016 death certificates
19 that you mentioned?

20 **A.** Yes. So during this report, clearly I was very engaged
21 with the, with the analysis of the work, of the, of the
22 description analysis understanding of this work. And there
23 is an Executive Summary that is provided on Page 4 of the
24 report.

25 **Q.** And we'll go into this report in a little bit more

1 detail probably after lunch, but I wanted to highlight for
2 the Court some of your key findings in regards to this
3 report.

4 Can you tell the Court what your key findings, based on
5 your investigation and your submitting this report to the
6 public record in the State of West Virginia?

7 MS. MAINIGI: Your Honor, objection. I have the
8 same objections to this report as I did the prior report,
9 Your Honor, with respect to relevance, hearsay.

10 And then I also don't think a proper foundation has
11 been laid. It does not appear that Dr. Gupta, if you look
12 at page, the third page of the report, was really involved
13 in the preparation of the report. He does not seem to have
14 been the person who wrote the Executive Summary either.

15 So relevance, foundation, and hearsay.

16 THE COURT: Do you want to respond, Ms. Kearse?

17 MS. KEARSE: Yes. I think Dr. Gupta has
18 testified -- we can go into much more detail -- as the
19 Public Health Commissioner of the State of West Virginia, he
20 not only commissioned this report pursuant to statute there,
21 but was very involved in this report.

22 And I'll, I could ask additional questions and the
23 significance of this report in your work as public health.

24 He's testified both in deposition several times and to
25 the defendants as well on this issue with that. But it is

1 an investigation led by Dr. Gupta authorized by statute and
2 relevant to the issues before this Court on the
3 fact-findings and the additional information both in the
4 State of West Virginia and specific to Cabell County and
5 Huntington.

6 THE COURT: Who wrote the Executive Summary in the
7 report?

8 THE WITNESS: The, the team wrote the Executive
9 Summary with, with obviously clear direction from me. And
10 we had weekly meetings on this report for the longest
11 duration that this report was on-going.

12 THE COURT: Overruled.

13 MS. MAINIGI: Thank you, Your Honor.

14 BY MS. KEARSE:

15 **Q.** Dr. Gupta, have you -- in addition to making this a
16 public document, have you also presented to various
17 communities and -- in -- both nationally and to West
18 Virginia regarding your findings in this report?

19 **A.** Yes, I have presented myself. This has not only been
20 presented scores of times or many times by myself in
21 meetings, national, local, state meetings, but also it is
22 something that has been replicated by a number of state
23 health departments and local jurisdictions all across the
24 country since.

25 So this is methodology, procedures. We have provided

1 technical assistance to many, many jurisdictions across the
2 country to be -- to help them be able to replicate this work
3 for their own jurisdictions.

4 **Q.** I'd like to just go through a couple of your, your
5 summary of findings and the importance of that.

6 If you'll start with bullet number 1, "The majority of
7 81 percent of overdose decedents interacted with at least
8 one of the health systems in this report."

9 What is the importance of that -- of your -- let me --
10 I'm going to back up to make sure we lay a foundation.

11 What were some of the, the key data sources that you
12 looked at and why? I think you mentioned a number of them.
13 But why was it important to involve various other
14 departments in looking at other data?

15 **A.** So, Your Honor, one of the key problems in government
16 per se is data pieces of different agencies, and they don't
17 talk to each other and it's a problem.

18 So what I did was encouraged people to have Mutual Use
19 Agreements, MUAs. I said, "We're going to do this whether
20 you guys like it or not, and we're going to do this with an
21 MUA and I don't want a bureaucratic process stopping it."

22 So we executed MUAs with all of these agencies I
23 mentioned. So the death certificate is put at one agency.
24 The cause of death is somewhere else, the medical examiners.

25 If somebody sought behavioral health treatment, that's

1 with the treatment providers and that has to be obtained.

2 If someone filled their prescriptions for oxycodone,
3 that's the Controlled Substance Monitoring Program with the
4 Board of Pharmacy. That's a different place it's at. I
5 embedded a person from the Board of Pharmacy into my agency.

6 So we utilized all of the tools and instruments that
7 were available to us, the State of West Virginia, to be able
8 to create the conditions in which this difficult work of all
9 different government agencies talking to each other could
10 happen.

11 We had an MUA with the Department of Safety -- Military
12 Affairs and Public Safety because we wanted to get all the
13 incarceration data because I wanted to know if people who
14 were released, did they die of opioid overdose; and if they
15 did, when did they die.

16 I wanted to know -- so what we did was -- so just
17 imagine CSI. We looked at -- we took every death. 830 West
18 Virginians had died. We created -- there was a dashboard.
19 Literally there was a board, a white chalkboard in our
20 offices.

21 We went through every one of these individuals. We
22 treated them with grace, with respect. We talked to their
23 family members, each one of them, dialed them up. And we
24 said, "Tell us more. Tell us, are they married? Did they
25 have education? How far was the education?"

1 Imagine, Your Honor, talking to the family after
2 they've had a deceased individual. But we wanted to create
3 that so we could understand better who they lived with, how
4 often did they work, what kind of education they had, were
5 they married or not, what kind of situation. We created
6 their life 12 months before death. And that creation of
7 life allowed us to learn.

8 So all of these results are really every single
9 individual, not, not, not -- so what happens, Your Honor,
10 the other thing is people talk about studies. So if you
11 have 1,000 deaths, researchers will -- they will do a
12 sampling. They'll take 100 deaths and they'll sample and
13 try to extrapolate to 1,000 people. That is a sampling.

14 And you talk about methodology. Then you talk about
15 the P value and all those things. This is the highest level
16 of the study you can do when you study the entire
17 population. There is no sample because often researchers
18 look it up. They want to know how much grant do I have? Do
19 I have a grant to do 100 people or 50 people or 200?

20 We had the State of West Virginia resources, but we
21 didn't sample this population. We took 100 percent of
22 everybody who died who this was the entire community. So
23 this is a gold standard study. There is no higher standard
24 of this in science.

25 So we took everybody and we studied their life 12

1 months before they died. And these findings are reporting
2 what we found of their life. And we, we, of course, wanted
3 to learn that.

4 **Q.** Thank you.

5 MS. KEARSE: Your Honor, I'm going to go through a
6 number of the findings. I don't know if this is a good time
7 to break. It's two minutes until 12, but I thought maybe
8 this would be --

9 THE COURT: Yeah. Let's quit until 2:00. We'll
10 be in recess until 2:00.

11 You can step down during the break, Dr. Gupta. We're
12 not going to make you sit there for two hours.

13 THE WITNESS: Thank you, Your Honor.

14 (Recess taken at 12:00 p.m.)

15 Insert

16
17 THE COURT: Dr. Gupta, if you're here, you can
18 resume the witness stand and you're still under oath, sir.

19 All right, Ms. Kearse.

20 MS. KEARSE: Good afternoon, Your Honor.

21 Good afternoon, Dr. Gupta.

22 BY MS. KEARSE:

23 **Q.** Dr. Gupta, if you'll recall, we left off talking about
24 what you've called the Social Autopsy Report.

25 **A.** Yes.

1 **Q.** Okay. And I was about to do a deep dive into that, but
2 you gave some -- some overview of that and one of the first
3 things I want to make sure is that anything that's -- that
4 you, as the Commissioner of Public Health of West Virginia,
5 in regards to the 2016 West Virginia overdose fatality
6 analysis, that pertains to both West Virginia and also
7 encompasses Cabell County and City of Huntington in your
8 work?

9 **A.** Yes.

10 **Q.** And I believe -- and I wanted to cover all the ground
11 with, too, but you've covered how did it come about. And I
12 believe you covered the purpose of the investigation. And I
13 want to talk about some of your findings, generally
14 speaking.

15 MS. KEARSE: I've lost my water. Thank you.

16 BY MS. KEARSE:

17 **Q.** Dr. Gupta, were there some -- were there some general
18 findings related to opiate addiction in West Virginia that
19 you reported in your report?

20 **A.** Yes. And I just want to like mention this, that part
21 of this report, not only did I direct and supervise it and
22 had a day-to-day involvement, daily involvement in it, but
23 to seek the assistance of CDC, the Commissioner has to make
24 a request. So, I was intricately involved in making a
25 formal request to the CDC to help us get some more resources

1 on this particular analysis. So, that was another aspect
2 that was important, to -- to make sure that we the best
3 epidemiologists, the best scientists, the best minds in the
4 nation working on that analysis.

5 **Q.** And, Doctor, what do you -- what do you mean by you had
6 to get the CDC involved?

7 **A.** So, whenever we conduct an analysis, especially one
8 that is, you know, being in this wave, we want to make sure
9 that our methodology, the design of the study, the findings,
10 the implications of those findings, all that work is
11 informed by the best practices, informed by the best
12 science, and informed by the best minds in the country and
13 that's -- we have a mechanism where the Commissioner can
14 request assistance from the CDC and, if it is able to and
15 available, CDC will provide that technical assistance
16 support.

17 So, what that means is, we get people on CDC's budget
18 that fly into Charleston, stay in hotel for the duration of
19 the time, and work with us every single day, including
20 weekends, to make sure that the work that is happening here
21 is impeccable, is evidence based, and is sound in nature
22 from a scientific aspect.

23 **Q.** Thank you, Doctor. So, sort of some of the general
24 findings first and then we'll dig down a little bit. Can
25 you tell the Court generally what were some of the findings

1 specific to opioid addiction in West Virginia that would
2 encompass Cabell County and City of Huntington?

3 **A.** Sure. So, Page 6, I'm going to start with a summary of
4 key findings, but before I get to that Page 6, you know, the
5 way this was done, as I mentioned before, it was to look at
6 all of the West Virginia residents. Again, look at all the
7 deaths in West Virginia residents from overdoses that
8 happened from the year 2016 knowing that the total number of
9 deaths are probably an underestimate.

10 So, you might say, well, how is it an underestimate?
11 Because --

12 **Q.** Doctor, how is it an underestimate?

13 **A.** Because it takes months for data to come in. For
14 example, at the -- on December 31st, 2016, we will not have
15 a complete understanding of all the deaths that happened in
16 2016 because some of the lab work, some of the drugs that
17 are in the system, may take three or four months to come
18 back in our labs. So, it takes awhile for that.

19 Now, the reason that's important is we could not wait.
20 We did not want to wait. This was a matter of urgent
21 crisis. So, we said we need to move ahead with this right
22 now and move, although this is not a complete report of all
23 the deaths. We expected more deaths that would be coming in
24 in 2016 but, at that time, what we had was good enough for
25 us to start moving forward.

1 And so, it was about, you know, all the deaths of West
2 Virginia residents and we conducted the analysis, as I
3 explained to the Court prior to the break.

4 **Q.** All right. I think you've covered the -- just the very
5 beginning of the executive summary. The purpose of the
6 report, do you see that? I want to make sure I asked you
7 about that. You mentioned the executive summary that you
8 oversaw?

9 **A.** Yes. So, we recognize that -- so, West Virginia -- the
10 statement here is West Virginia continues to lead the nation
11 in overdose deaths per capita.

12 Your Honor, I want to make a case here. West Virginia
13 didn't lead and there's a number two and a number three
14 state. West Virginia consistently stayed at high levels,
15 which is 33% deaths per capita more than the second state
16 line. Sometime -- some years that was new Hampshire, some
17 years that was Ohio, but the point is, we were here
18 (indicating), and there's a big gap, and then the second and
19 third and fourth state in the nation. So, when I say West
20 Virginia leads, what I mean, leads by a lot.

21 **Q.** And the second sentence, "This takes a significant toll
22 on individuals, families and communities and government
23 resources." Was that your -- one of your key findings?

24 **A.** We -- that sentence, because the entire government of
25 West Virginia was dealing in one manner or another with the

1 consequences of addiction, consequences of this crisis. So,
2 the deaths are the tip of an iceberg and we were dealing
3 with the rest of the iceberg, as well. As tragic as the
4 deaths were, they were only a piece of the entire puzzle.

5 **Q.** And what do you mean by that?

6 **A.** What I mean by that is that the fatal overdoses, or
7 overdose deaths, we call them, does not do justice to
8 understanding the entire crisis that was occurring as a
9 consequence of addiction and continues to occur in the State
10 of West Virginia.

11 What I mean by that, also, is for every fatal overdose,
12 you have tens of non-fatal overdose, meaning these people
13 that are coming to emergency rooms and we were not having
14 enough resources, what we call -- we call it treat them and
15 street them. That means these people would come with
16 overdose to the emergency room. We would give them the
17 immediate treatment that we could at the time to save their
18 life, mostly naloxone, an antidote, and that we would, you
19 know, not have the ability to have beds or other resources
20 to connect them to.

21 There are also people in the community that we would
22 call and we would have units run over. These are EMS units.
23 EMS agency is also under the purview of the Commissioner of
24 Bureau of Public Health and a lot of times these -- a lot of
25 -- in West Virginia, a lot of these EMS and first responder

1 communities are voluntary community, voluntary agencies.

2 So, they're having to figure out how to take this
3 magnitude of calls and deal with it when they're not getting
4 any outside funding. And, oftentimes, they would go to the
5 person that -- and respond, answer the call. They would get
6 the naloxone. The person wakes up, refuses to go to the
7 hospital, walks away or is upset, and these people have no
8 way to be reimbursed, not for the call, or for the naloxone,
9 or that service. So, non-fatal overdoses.

10 Then we had the third of substance use disorder --

11 MS. MAINIGI: Objection, Your Honor. I move to
12 strike most of Dr. Gupta's answer unless there can be a
13 foundation established. I mean that, certainly, what he
14 just testified to is not in his report by my understanding.
15 I don't know what his basis is, but if his basis is what
16 others have told him, obviously, that's objectionable. If
17 he witnessed it on the ground himself, I think that's
18 another story, but if he's going to diverge into other
19 pieces of testimony beyond this report at this point, I
20 think we have to establish a foundation.

21 THE COURT: I will sustain the objection.

22 Dr. Gupta, you need to answer the precise question. I
23 know you've got a lot to say, and a lot on your mind, and we
24 appreciate that, but you just need to listen and answer the
25 precise question, if you can, sir.

1 THE WITNESS: Yes, Your Honor.

2 MS. KEARSE: Yes. We'll work on that.

3 BY MS. KEARSE:

4 Q. And, to be fair, I think we were talking about the
5 significant untold individuals, families, communities and
6 government resources, but we can come back to some of those
7 things later with that, but I would ask one follow-up
8 question.

9 You did mention naloxone and that's a term I don't know
10 that we've heard too much about. We've talked about it in
11 our opening statements. Can you tell the Court, what is
12 naloxone?

13 A. Naloxone is also, Your Honor, known as Narcan commonly.
14 It's an antidote. It works to reverse someone who is
15 overdosing with an opioid and can be given through nose,
16 through injection, through IV. So, it's one of those
17 immediate -- it's lifesaving. It makes you come back to
18 life and then you can put it -- it's not the treatment, but
19 it's a rescue medication.

20 Q. And the third sentence there, "The purpose of this
21 report is to study West Virginia overdoses deaths, to
22 identify opportunities for intervention in the twelve months
23 prior to death." So, I want to understand, what does that
24 statement mean, "twelve months prior", and what do you mean
25 by "intervention"?

1 **A.** So, we believe that if we study somebody's life
2 twelve months prior to dying, we may find clues as to how we
3 can in the future plan strategies that would help save those
4 lives.

5 **Q.** And, as part of that, I'm not going to go through every
6 sentence. I went through three of them on that. So, going
7 now to your findings and going into more detail, but were
8 there some overarching findings that related to opioid
9 addiction that you found and reported in your investigation?

10 **A.** So, on Page 6 of the Summary of Key Findings is the --
11 is the -- is the key findings. And I'll go over these.

12 First one is that the majority, that's 81 percent or 4
13 out of five overdose decedents, did interact with at least
14 one of the health systems that we found. So, we found that
15 these weren't people on the street homeless that nobody
16 cared for, what that means. This means that these were
17 people, human beings, that actually were interacting with
18 the healthcare system, whether they were coming in for
19 emergency room care, getting the naloxone through EMS,
20 getting treatment in substance use centers, or filling a
21 prescription for controlled substances. But these were
22 individuals that, four out of five individuals within
23 twelve months of their death had, in some way or the other,
24 interacted with the healthcare system.

25 **Q.** And can you explain? What do you mean "interacted"?

1 Was that for treatment or was -- what? Can you explain
2 that?

3 **A.** So, it could be all of that. So, if someone went and
4 filled a prescription for OxyContin, that's an interaction.
5 If somebody went and get their treatment for substance use
6 disorder, that's an interaction. Somebody got overdose, but
7 didn't die at, you know, three times, four times, two times,
8 but within twelve months before they finally died, that was
9 a cry out for help and that was an interaction.

10 **Q.** I want to focus on numbers -- the next two bullet
11 points, specifically about your looking at the prescription
12 records between the -- before the time of death and then
13 when you did your social autopsy. Can you tell us what that
14 key finding is? And we'll go into a little bit more detail
15 of what that means.

16 **A.** So, this is one of the most important key findings,
17 this work. It shows that 33% or about a third of the
18 decedents tested positive for a controlled substance, but we
19 could not find a record of prescription time of death. That
20 clearly is the most compelling indication of the large
21 volume flowing of controlled substances in the community and
22 obviously --

23 MS. MAINIGI: Objection, Your Honor. Objection.
24 There's no foundation for that. I see what his opinion is
25 and, certainly, he can explain his opinion, but he's trying

1 to explain what the cause was of his finding.

2 THE COURT: Sustained.

3 BY MS. KEARSE:

4 Q. Okay, Doctor, so I want you -- one of your key findings
5 was bullet number 2?

6 A. Yes.

7 Q. Okay. And can you read that for the Court?

8 A. 33% of decedents tested positive for a controlled
9 substance, but had no record of prescription at their time
10 of death, indicating diversion of a controlled substance
11 prescription.

12 Q. And was there a significance to -- let's do the two
13 together and then I want to ask you a question. Bullet
14 point number 3 on Summary of Key Findings?

15 A. 91% of all decedents had a documented history within
16 the Controlled Substance Monitoring Program. In the 30 days
17 prior to death, nearly half, 49%, of female decedents filled
18 a controlled substance prescription in the 30 days prior to
19 death, as compared to 36% of males.

20 Q. And does the report go in detail about these findings
21 to allow you to summarize them here?

22 A. Yes.

23 Q. What was the significance of the finding about the
24 prescription -- the prescriptions prior to their time of
25 death?

1 **A.** The significance of the third bullet point really,
2 having prescriptions prior to the time of death, means that
3 nine out of ten decedents filled a prescription within the
4 12 months of their death, but in 30 days before their death,
5 almost half of all females and 36% of all males actually
6 also filled their prescription before their death, 30 days
7 before their death.

8 **Q.** And when you talk about the fact that this indicated
9 diversion, what do you mean about -- what does that mean?

10 **A.** So, if I have controlled substances in my possession
11 but I don't have a prescription and there's no documentation
12 of me getting a prescription, going to a doctor, filling a
13 prescription at the pharmacy, that means one thing; I got it
14 through illegitimate means. And that's what we call
15 diversion.

16 **Q.** I don't want to have to go through every one of the key
17 findings on there, too, but I want to look at bullet point
18 -- the next bullet point between -- the next two and we'll
19 do that and we'll go into the depths of the report. Key
20 finding number 4?

21 **A.** Decedents were three times more likely to have three or
22 more prescribers as compared to overall Controlled Substance
23 Monitoring Program population for 2016, 9% versus 3%.
24 Decedents were more than 70 times more likely to have
25 prescriptions at four or more pharmacies compared to the

1 overall Controlled Substance Monitoring Program population
2 for 2016. That's 7% versus .1%.

3 **Q.** What's the significance of that finding?

4 **A.** Significance is that it's very clear from the findings
5 and it's compelling evidence that if you were going to more
6 than one prescriber, or three or more prescribers, in this
7 case, you are much more likely to die because of drug
8 overdose. If you were going to four or more pharmacies, you
9 are 70 times more likely to die of a drug overdose.

10 **Q.** And the next 1, 71% of all decedents?

11 **A.** 71% of all decedents utilized Emergency Medical
12 Services within the 12 months prior to their death.
13 Regardless of the type of EMS run, only 31% of the decedents
14 had naloxone administration documented in their EMS record.

15 **Q.** And what was the significance of that finding, Doctor?

16 **A.** Significance of that is how a community and a state --
17 certainly, Cabell County and City of Huntington are
18 struggling with --

19 MS. MAINIGI: Objection, Your Honor. That -- this
20 is also outside the scope. There's no foundation for that.
21 If he wants to say what -- what this particular finding,
22 which he's read out loud and it's plainly clear what it
23 means, but what the implications are about communities
24 struggling, I don't see that in part of this report and I
25 think there's no foundation for him testifying about that.

1 THE COURT: I'll overrule the objection. He's
2 explaining the data and I'll -- I won't let you go very far
3 with this, but right now, the objection is overruled.

4 THE WITNESS: So, can I -- so, what that means is
5 only 31% of decedents got naloxone, meaning 100% died of
6 drug overdose and they should have all gotten naloxone, but
7 only three out of ten people actually got naloxone.

8 Now, what I mean is community may not have resources to
9 purchase naloxone. They may not have training to administer
10 naloxone. And there could be many other factors. They may
11 have stigma, there may be that they --

12 MS. MAINIGI: Objection, Your Honor.

13 THE COURT: Well, I will sustain the objection and
14 strike the --

15 MS. KEARSE: The last.

16 THE COURT: The answer about the conclusion about
17 the community and the lack of resources.

18 BY MS. KEARSE:

19 **Q.** But, Dr. Gupta, but this is one of your key findings
20 and the purpose of your report is for intervention. So, in
21 regards to intervention with that, what does that tell you
22 about the intervention and key finding pertaining to the
23 purpose of the report?

24 **A.** The entire report, you're asking me?

25 **Q.** Yes. We read about the purpose of the report was to

1 look at 12 months for intervention, so is there a specific
2 intervention that this key finding refers to?

3 MS. MAINIGI: Objection, Your Honor. I think
4 that's beyond the scope of the report. I don't see -- and I
5 could be wrong about this, but I'm not aware of a section on
6 interventions that specifically relate. Perhaps, if Ms.
7 Kearse wants to draw our attention to it, we can turn to it.

8 MS. KEARSE: Your Honor, I'm referring back to the
9 very beginning. We talked about the whole reason for this
10 report is the fact that the purpose of this report is to
11 study West Virginia overdose deaths and identify
12 opportunities for intervention in the 12 months prior to
13 death. This is one of his key findings.

14 THE COURT: I'll let him answer that. Overruled.

15 THE WITNESS: So, on Page 58, there are clear
16 summary of key recommendations of the report. I'm happy to
17 read those out, if you would like me to.

18 BY MS. KEARSE:

19 **Q.** Okay. So, these -- and to be clear, what we've gone to
20 then is Page 58, which you're tying together the Summary of
21 Key Findings to the Summary of Key Recommendations, okay?
22 Is there a particular part of that that you are referring to
23 in regard --

24 **A.** So -- so, the key recommendations are a result of the
25 findings.

1 Q. And we're talking specifically about naloxone, so I'm
2 going to get there, but I just want to tie this. Is there a
3 specific recommendation that dealt with the bullet point
4 that there was only 31% of the people who overdosed who got
5 naloxone?

6 A. So, the finding -- the -- if you start to go from the
7 bottom up, you can see one of the second last findings is
8 prescribers who've considered offering naloxone for
9 individuals at increased risk for opioid overdose. It also
10 says that corrections officials should work with judges to
11 assure naloxone availability, treatment referral and support
12 at release of incarceration.

13 And the last bullet is EMS responders and the public
14 may benefit from education regarding overdose signs and
15 symptoms. This education should include information
16 specific to individuals older than 65 years to increase a
17 chance that someone will call Emergency Services and that
18 appropriate administration of naloxone is offered.

19 Q. And that's referring back to your key finding regarding
20 that only 31% of people had naloxone?

21 A. Correct.

22 Q. Is this a matter of saving lives?

23 MR. HESTER: Objection. Leading.

24 THE COURT: Sustained.

25 BY MS. KEARSE:

1 Q. Is this in response then to the fact that -- well,
2 strike that. I think we've made the point. I want to go to
3 the other bullet points with that, as well, and we'll come
4 back with that. Let me put the nail on the head with this.
5 Why is this important regarding -- to have naloxone
6 available as an intervention to people who overdose?

7 MS. MAINIGI: Objection. Again, Your Honor, it's
8 outside the scope. I think he's covered it already in one
9 of his answers, so it's asked and answered, as well, but
10 there's no foundation for why he would be explaining the why
11 here. He's explaining the findings. He's explaining the
12 recommendations. That's all well and good, but why I don't
13 think is something within his purview as a fact witness or
14 even as a hybrid.

15 MS. KEARSE: Your Honor, I believe the whole point
16 of this is what the intervention did and finding --
17 researching for this social autopsy on why this happened and
18 how we're going to prevent it from happening in the future,
19 the intervention, and that's why they -- Judge, as to the
20 naloxone, I just want to make sure we were clear on where we
21 were on that.

22 THE COURT: Well, I'll overrule the objection, but
23 you're getting in pretty -- well, go ahead for now.

24 MS. KEARSE: And I want to move on from this
25 moment, Judge. I just want to make sure we're complete.

1 THE WITNESS: So, Your Honor, one of the things we
2 did when we learned this, as we were getting about a million
3 dollars of SAMHSA funds for naloxone in the State of West
4 Virginia, and we put that million dollars to purchase
5 naloxone.

6 MR. HESTER: Objection, Your Honor. I'm not sure
7 there was a question pending.

8 THE COURT: I'm not sure. I will sustain the
9 objection. Strike that answer.

10 That was out in left field, Ms. Kearse.

11 MS. KEARSE: Okay. And I don't know. I -- now I
12 forget what the question was.

13 THE COURT: Well, you need to answer the
14 questions, Dr. Gupta, as best you can.

15 MS. KEARSE: Yeah. Yeah.

16 THE WITNESS: Yes, sir.

17 MS. KEARSE: We'll move on from that. I honestly
18 don't remember the question that was pending, but I think
19 we've made -- we've talked about naloxone with that, too.

20 BY MS. KEARSE:

21 Q. All right. So, I want to go to some other key findings
22 that are actually within the report on here, as well, and on
23 Page 8, I just want to make sure that this is when you're
24 working -- when we're working with the purpose of this and
25 what you're finding and so that we're clear on why the

1 report is being done and what you're finding in that, can
2 you just tell me why this part is in this report, overdose
3 trends in West Virginia, and why it was significant to your
4 social autopsy?

5 THE COURT: Well, he's already testified about
6 this, hasn't he?

7 MS. MAINIGI: He has, Your Honor.

8 MS. KEARSE: Okay.

9 THE COURT: I think this is cumulative.

10 MS. KEARSE: Okay. All right.

11 BY MS. KEARSE:

12 Q. On page -- on Page 9, I'm not going to go over Page 9.
13 You actually go back into this. The overdose and historic
14 review from 2001 and 2015 and this, I believe you already
15 testified, is a follow-up to that. On Page 10, 2.3.3 --

16 MS. MAINIGI: Your Honor, just one objection. I
17 apologize for continuing to interrupt. Ms. Kearse just
18 continues trying to summarize what is happening here and
19 that's just improper in the course of a direct exam.

20 THE COURT: Sustained.

21 MS. KEARSE: Okay.

22 BY MS. KEARSE:

23 Q. Based on your findings, was there a -- certain types of
24 controlled substances in this report that you were
25 predominantly referring to?

1 **A.** For the entire report?

2 **Q.** Yes.

3 **A.** So, yes.

4 **Q.** And can you explain?

5 **A.** It was opioids and benzos.

6 **Q.** And within your report did you also look into the
7 various individuals, including pregnant women and mothers,
8 in regards to their taking of subscription -- or their death
9 records on there, as well?

10 **A.** Yes.

11 **Q.** And can you tell the Court, in regards to maternal drug
12 use, what your study found with that social autopsy?

13 **A.** So, we found -- if it's related to this social autopsy,
14 we found that through the analysis of West Virginia's
15 maternal mortality, which includes any death within a year
16 of giving birth, we identified 18 maternal deaths in 2016 of
17 which 44% either had a documented substance abuse problem or
18 died from an overdose.

19 **Q.** And why was that important to your intervention purpose
20 of the social autopsy?

21 MS. MAINIGI: Objection, foundation.

22 THE COURT: Yeah. He -- I'm going to let him
23 testify about his conclusions, but when he -- he goes into
24 the explanations you're asking him to do, it seems to me
25 like Ms. Mainigi is correct and the questions are improper.

1 MS. KEARSE: Okay. Well, I can back it up, Your
2 Honor.

3 BY MS. KEARSE:

4 Q. How did you come to that conclusion?

5 THE COURT: I think that question is okay.

6 MS. KEARSE: Okay.

7 BY MS. KEARSE:

8 Q. How did you come --

9 MS. MAINIGI: I think it is a different question,
10 Your Honor. As long as the answer is not the same, I think,
11 is what we'll find out.

12 THE COURT: Well --

13 THE WITNESS: Could you repeat the question,
14 please?

15 BY MS. KEARSE:

16 Q. What was the question? I think -- I think we're -- if
17 I have it right, we were talking about the findings you had
18 regarding maternal drug use and I was referring specifically
19 to the statement that you just read. And I just want to say
20 what -- how did you come to that conclusion? So, what we're
21 asking for is, in your social autopsy and the work that you
22 explained you did, what was it that led you to be able to
23 make these conclusions?

24 MR. HESTER: Object as leading, Your Honor. I
25 think she's coaching the witness in the --

1 BY MS. KEARSE:

2 Q. How did you make the conclusion?

3 THE COURT: Well, you have to do a little bit of
4 leading just to get to the meat of the subject, so I'll
5 overrule that one, but do you understand the question, Dr.
6 Gupta?

7 THE WITNESS: Your Honor, I'm a bit confused. I
8 would love direction just to stick to the overdose fatality
9 analysis or be here as a Commissioner as Public Health, my
10 role.

11 THE COURT: Well, you can testify -- and, counsel,
12 correct me if I'm wrong, but you can testify as to what you
13 did, and what your conclusions were, and what the basis of
14 those were, but the editorializing about the implications
15 and so forth is -- I think Ms. Mainigi is correct and --
16 I keep mispronouncing your name.

17 MS. MAINIGI: No. I think you got it right, Your
18 Honor.

19 THE COURT: Okay.

20 THE WITNESS: I understand, Your Honor.

21 THE COURT: I think you understand.

22 THE WITNESS: Yes.

23 BY MS. KEARSE:

24 Q. So, I'm asking, what is the basis then of that finding?

25 A. So, Ms. Kearse, we had done studies as Commissioner for

1 Bureau of Public Health. We found that 5% of the babies --

2 MS. MAINIGI: Objection, Your Honor, foundation.
3 These studies appear to be outside this report that we're
4 talking about. Perhaps we can get a clarification.

5 THE COURT: Well, is this the only report? Is
6 this related to his report?

7 MS. KEARSE: I have no -- I'm asking the doctor.
8 I don't know if it's specifically in here or if there was a
9 basis for that because I want to make sure it's -- as part
10 of the social autopsy, I want to know the basis of his
11 opinion so we can --

12 THE WITNESS: So, social autopsy was done on human
13 beings, and there were men, and there were women, and women
14 were pregnant and, when pregnant, it is very important to
15 understand what the characteristics is because we were
16 seeing rise in maternal mortality because of opioid
17 overdose. That's the basis. We were also seeing other
18 trends that were impacting moms and babies.

19 That's the basis. And it's written in the report. So,
20 it's on Page 11, top. If you read it, it's in there. So,
21 it says findings from October 1, 2016 to September 30th,
22 2017 indicate that 14%, that's 2,691 infants, 14%,
23 experienced intrauterine substance exposure and 1,023
24 infants, that's 5% percent of all births in West Virginia,
25 but 5% were diagnosed with NAS.

1 **Q.** All right, Doctor. And NAS is a -- it may be a new
2 term for the trial with that. Can you -- so, I want to go
3 back as we talked about within your report there are bases
4 for these findings and you refer to Page 11. And I want to
5 make sure we have an understanding definitionally. What is
6 NAS?

7 **A.** Your Honor, I would be happy to explain that.

8 THE COURT: Yes, please.

9 THE WITNESS: So, NAS stands for Neonatal
10 Abstinence Syndrome. When opioids are involved, it is also
11 called Neonatal Opioid Withdrawal Syndrome. It is when a
12 baby is born and, within hours to days, it goes under
13 intense withdrawals that is signified by incessant crying,
14 their inability -- not eating, high fevers, can have
15 seizures and can die. That's called NAS. And that happens
16 because a baby is undergoing withdrawals because the mother
17 was using substances. That's NAS.

18 BY MS. KEARSE:

19 **Q.** And as part of your findings and purpose of the report,
20 were there interventions that you have in your findings or
21 within the body of your report or study?

22 **A.** Ms. Kearse, there's a different study that we did that
23 shows that. It's listed the way it is in this report. So
24 --

25 **Q.** Okay. We can get to that then.

1 **A.** Yeah.

2 **Q.** In that report, that, too.

3 MS. KEARSE: I'll move on through some of these I
4 know we've covered already. I'm skipping through some of
5 them, Your Honor.

6 BY MS. KEARSE:

7 **Q.** Dr. Gupta, on Page 51, there's another finding that I
8 would like to draw your attention to and this is 4.10.3.
9 And as part of the purpose of the social autopsy for
10 intervention, I would like to talk about the finding at
11 4.10.3, Other Controlled Substance Program Monitoring
12 Program Findings; specifically, medication-assisted
13 treatment and MAT. In regards to your social autopsy, what
14 is -- if you could explain to the Court the finding and the
15 basis for this finding.

16 **A.** So --

17 **Q.** If you can read it to the Court first so we can
18 understand what it is.

19 **A.** Okay. So, 4.10.3 says, "Other Controlled Substance
20 Program Monitoring Program Findings: Medication Assisted
21 Treatment (MAT). According to the SAMHSA, MAT is the use of
22 medications in combination with counseling and behavioral
23 therapies for the treatment of substance use disorders. A
24 combination of medication and behavioral therapies is
25 effective in the treatment of substance use disorders and

1 can help some people to sustain recovery."

2 And that goes on to say, "17,815, that's 3%, people
3 have an MAT prescription documented in the Controlled
4 Substance Monitoring Program as compared to 58 or 7% percent
5 of the decedents. This report was unable to document the
6 utilization of counseling and behavioral therapy for this
7 group."

8 Q. And what was the significance of that finding?

9 MS. MAINIGI: Objection, Your Honor, foundation
10 and relevance.

11 BY MS. KEARSE:

12 Q. So, what is the --

13 MS. MAINIGI: Excuse me. I'm sorry. Foundation
14 and relevance here, Your Honor. This seems to be abatement
15 testimony. That is not an area in which, even as a hybrid
16 witness, Dr. Gupta was offered. My concern is coming in
17 part from the fact, Your Honor, that we do know Dr. Gupta,
18 as he testified in his deposition, is a paid expert for the
19 MLP plaintiffs. He is not a paid expert -- and the topic is
20 abatement in that case that he is a paid expert, but he is
21 not a paid expert here on abatement. And so, I'm not sure
22 what the relevance is to this testimony.

23 THE COURT: Well, the question wasn't what was the
24 significance of that finding. You're basically asking him
25 for an expert opinion, aren't you?

1 MS. KEARSE: Well, as to the basis -- it's within
2 the report, Your Honor, as to what is the --

3 THE COURT: Well, you can ask him what the basis
4 for it was, but the significance, isn't that what you're
5 objecting to?

6 MS. MAINIGI: It is, Your Honor, and I'm not sure
7 what the relevance -- I realize he's -- he, you know,
8 oversaw the report, commissioned the report, but as to why
9 this part of the report is relevant, and especially relevant
10 for Dr. Gupta to be testifying about, I have an objection to
11 that. But I'm worried we are encroaching into expert
12 testimony where he was not disclosed.

13 MS. KEARSE: And, Your Honor, if I can bring that
14 back, I do believe there will be cross examination.

15 THE COURT: Well, I've sustained the objection.
16 You can -- you make another try at it.

17 MS. KEARSE: Okay.

18 BY MS. KEARSE:

19 **Q.** Can you tell me what the basis of these findings were
20 in relation to the Social Autopsy Report whose purpose is to
21 find -- identify opportunities for intervention?

22 **A.** So, the statement clearly states that the standard of
23 care is MAT. That's per SAMHSA. And only 7% of the
24 decedents were receiving. So, if these decedents, they
25 died, they died because of drug overdose and the treatment

1 of substance abuse disorder is MAT for this type of drug
2 overdose and only 7% of decedents were receiving MAT
3 according to the Controlled Substance Monitoring Program.

4 **Q.** Now, you mentioned you had the -- at the very end, you
5 had discussion and recommendations and, as part of your work
6 with the overdose fatality analysis and for its purpose for
7 intervention and your key findings, you made discussion and
8 recommendations?

9 **A.** Yes.

10 **Q.** Okay. And I would like to just go over those with the
11 Court on the various recommendations. And I'll go back to
12 -- you have referred me, Dr. Gupta, to the key -- I don't
13 want to repeat where we are. You've got the Summary of Key
14 Recommendations and then you have a section on discussion
15 and recommendations. So, I don't want to go over both.
16 We'll just do the summary of recommendations.

17 **A.** I -- if --

18 **Q.** All right.

19 **A.** Is that a question?

20 **Q.** All right. So, I'd like to -- to wrap this social
21 autopsy, you made your findings, your key findings, you had
22 the basis for those findings. I'm asking you what were the
23 recommendations that came out of this report based on your
24 work?

25 **MR. HESTER:** Object to the form of the question,

1 Your Honor. It's leading.

2 THE COURT: Well, okay. Overruled. I'm going to
3 let him testify as to -- well, you go ahead and ask the
4 question.

5 MS. KEARSE: Okay.

6 BY MS. KEARSE:

7 **Q.** Did you make -- did -- with your Social Autopsy Report,
8 which is the 2016 West Virginia Overdose Fatality Analysis,
9 did the investigation make recommendations regarding the
10 social autopsy?

11 **A.** Yes, they did, and they begin on Page 56.

12 **Q.** Okay. Can you highlight for the Court your
13 recommendations that stem from your investigation of this
14 report?

15 **A.** My -- the discussion and recommendations stated in this
16 report begin on page 56. I will read the beginning of that.
17 "Substance abuse in West Virginia is devastating
18 communities."

19 MS. MAINIGI: Objection, Your Honor. I don't --
20 this is just serving as a vehicle to read entire paragraphs
21 of the report that are potentially incendiary and I don't
22 understand to what end and what purpose other than to read
23 them into the record.

24 THE COURT: Well, he can say what his
25 recommendations were and how he came to the conclusion that

1 that's an appropriate recommendation.

2 And that's about it, Dr. Gupta. You're editorializing
3 about the problem and where you were led to by this is
4 outside the scope of what -- of your testimony here that's
5 proper and within those limits.

6 MS. KEARSE: Yes. That's what I've asked, Your
7 Honor.

8 BY MS. KEARSE:

9 **Q.** If you can tell the Court what your recommendations
10 were based on your investigation and submitting the 2016
11 West Virginia Overdose Fatality Analysis as the Commissioner
12 of Public Health for the State of West Virginia?

13 **A.** So, I'll start -- would you like to have the Summary of
14 Key Recommendations because I began to read the
15 recommendations and I was asked not to.

16 THE COURT: Well, I can read them, so he doesn't
17 have to read them.

18 MS. KEARSE: Okay. That's fair, Your Honor.

19 THE COURT: You can ask him about them and --

20 MS. KEARSE: Okay.

21 BY MS. KEARSE:

22 **Q.** Without going into the detail of reading with that, can
23 you give -- highlight for us what are the recommendations or
24 the key recommendations that came from this report for
25 intervention?

1 **A.** Yes. So, one of the recommendations is that every
2 entity in healthcare that's interfacing with individuals at
3 high risk for overdose must be prepared to offer screening,
4 referral and/or treatment to prevent overdose death and give
5 people a chance to recover.

6 Another recommendation was have prescribers run a
7 Controlled Substance Monitoring Program Report on each
8 patient by either prescribing any Schedule II drugs,
9 opioids, benzos. Exceptions may be the terminally ill
10 cancer patients.

11 Another recommendation was to enhance Controlled
12 Substance Monitoring Program Advisory Committee legislation
13 to identify abnormal or unusual prescribing and dispensing
14 patterns and to permit sharing this data with appropriate
15 professional licensing boards and other agencies.

16 Another recommendation was to develop Controlled
17 Substance Monitoring Program policies and procedures for
18 pro-active reports to alert prescribers about the increased
19 risk of overdose and potential misuse or diversion for those
20 individuals known to the Controlled Substance Monitoring
21 Program.

22 This is in addition to all healthcare professionals who
23 would benefit from continuing education opportunities that
24 help them to identify risk factors for overdose deaths and
25 retain individuals in substance abuse treatment. And I

1 mentioned already to the Court the last three.

2 THE COURT: And you came to the conclusion that
3 these were desirable things to be done based upon your
4 investigation, and your experience, and the things you put
5 in your report; is that right?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: These were conclusions that you drew
8 based upon the investigation that you told us about that led
9 to the report; is that -- is that accurate?

10 THE WITNESS: Yes, Your Honor, to the extent that
11 we could do anything about it.

12 THE COURT: And I'm leading him all around the
13 courtroom, Mr. Hester.

14 MR. HESTER: I wasn't going to object, Your Honor.

15 BY MS. KEARSE:

16 **Q.** Dr. Gupta, as a Public Health Commissioner and in
17 dealing with both this report and your work with opioids in
18 general, did you follow up on these recommendations, your
19 office?

20 **A.** Yes.

21 **Q.** I want to turn to -- and we'll get back to some of the
22 overarching things and totality of some of the things there,
23 but I want to turn to another report of yours and,
24 specifically, I want to ask you, have you worked with
25 members of the Cabell-Huntington community in regards to

1 opioid overdoses?

2 **A.** Yes.

3 **Q.** And, in particular, was there a certain event in time
4 that you dealt with overdoses for the -- with the
5 Cabell-Huntington community?

6 **A.** Yes.

7 **Q.** And I'd like to -- I'll go a little bit further back
8 and show you the document. Were you involved in an overdose
9 -- in August of 2016 -- analysis?

10 **A.** Of Huntington, yes.

11 **Q.** And can you tell the Court briefly about that and what
12 your involvement was with the City of Huntington as it
13 relates to specifically opioid-related overdoses?

14 **A.** Yes. So, Your Honor, what had happened was there was a
15 multiple number of overdoses within a matter of hours in the
16 City of Huntington. It became national news.

17 We, from an EMS standpoint and other standpoints, we
18 responded as a state. Subsequent to that, the Health Office
19 of the Cabell-Huntington Health Department reached out to me
20 and asked if we could provide the technical assistance and
21 support to conduct a full analysis to understand better what
22 that -- what was that event.

23 So, we worked very closely with the Cabell-Huntington
24 Health Department and the resources from the local City of
25 Huntington, Cabell County and State of West Virginia to

1 conduct that analysis.

2 **Q.** And did you issue a report in regards to that analysis?

3 **A.** We did.

4 MS. KEARSE: And does this have an exhibit number?

5 Your Honor, may I approach the witness?

6 THE COURT: Yes, you may.

7 BY MS. KEARSE:

8 **Q.** I'm showing you exhibit number P-4114a and ask if you
9 can identify that document for the Court?

10 **A.** This is Outbreak Report, Opiate-Related Overdose --
11 Huntington, West Virginia, August 2016.

12 **Q.** Now, Dr. Gupta, as a -- was this report done under your
13 role as the Public Health Commissioner for the State of West
14 Virginia?

15 **A.** Yes. It was commissioned by me, directed by me, and
16 supervised by me, and conducted.

17 **Q.** And how did it -- and you mentioned there was obviously
18 a drug overdose, but how did your Office of Public Health
19 become involved in working with Cabell County, with the
20 Mayor's Office, Drug Policy and Control, and the hospital
21 and Health Department?

22 **A.** So, we routinely work with all of our counties across
23 the State of West Virginia, all 55, as Bureau of Public
24 Health and its various agencies, and especially on matters
25 of outbreaks and matters of public health concern. We then

1 create teams that work to provide both technical and
2 otherwise resource assistance to local community. So, this
3 is -- this report is one of the examples of such type of
4 partnership.

5 **Q.** And do you include your objectives in this report in
6 the executive summary?

7 **A.** Yes.

8 **Q.** And to reiterate, this is a report and, if you look at
9 the first paragraph, but I want to --I want to talk about
10 what you did and how you went about doing the investigation
11 objectives.

12 **A.** So, Your Honor, one of the things that often happens
13 with these events is they're put some way in media and facts
14 may be a little different. So, the purpose of this report
15 primarily is to find out the facts. It was fact finding and
16 it was also to understand better so we can once again
17 understand, connect, improve our ability to respond to these
18 types of deaths. I could read out the objectives if you
19 would like me to.

20 **Q.** Yes. I just -- you don't have to read it or you can --
21 you can summarize what the objectives are and then, I want
22 to know what you did to do the analysis.

23 **A.** So --

24 MS. MAINIGI: Objection, Your Honor. I apologize.
25 Ms. Kearse keeps referring to "you". We know that Dr. Gupta

1 did not actually conduct the report or do the work on the
2 report. It was Joel Massey, MD who did. I understand Dr.
3 Gupta directed him, but I don't want the record to be
4 unclear as to Dr. Gupta's role.

5 THE COURT: Okay. I will sustain that objection.

6 BY MS. KEARSE: Okay. So --

7 THE COURT: You can ask your questions a little
8 more precise on that.

9 BY MS. KEARSE:

10 **Q.** Dr. Gupta, in your position as the Public Health
11 Officer of the State of West Virginia, you actually
12 commissioned this report?

13 **A.** I commissioned, supervised, directed and had day-to-day
14 supervision of this work of the report.

15 **Q.** And this report, if I -- if I say that I won't use the
16 word "you", but as the Office of Public Health for the State
17 of West Virginia issued this report; specifically, the
18 Department of Health and Human Resources for the Bureau of
19 Public Health?

20 **A.** Ms. Kearse, I'm under oath. I'm going to be really
21 honest. I did issue this report. This is under me. So, I
22 will not mischaracterize that statement. It was my report.
23 I issued it.

24 **Q.** So, I can use "you". All right. So -- and so, I would
25 like to go over just some general findings with this and so,

1 if you can tell the Court what was involved in your analysis
2 and how you went about doing it with -- what you did and how
3 you did it.

4 **A.** Sure. So, what we conducted was an investigation, or I
5 conducted an investigation, that partnered with the West
6 Virginia Poison Control Center, the West Virginia Office of
7 Emergency Services, Police and Fire Departments in Cabell
8 County, as well as the Cabell County Health Department,
9 Cabell-Huntington Health Department.

10 We, first of all, analyzed what happened. We found
11 that there was a 53-hour period over which there were
12 multiple overdoses that occurred. We wanted to understand
13 what happened, so we worked with the local hospitals to get
14 all the patient encounters, all of that data and during that
15 time period to separate out the ones that had gone -- the
16 overdoses versus everybody else that came in.

17 We found that there were about 20 people that had come
18 in that had records that met the case definitions.

19 So, one of the first things we had to do, Your Honor,
20 was to develop a case definition. That's the first element
21 of a public health outbreak. You've got to figure out what
22 your case definition is. When will you have a cutoff that
23 came? When will you have a cutoff on the other end? That
24 case definition was never developed before this episode.

25 MR. HESTER: Objection to the narrative, Your

1 Honor. I don't think he's responding to Ms. Kearse's
2 question.

3 THE COURT: Well, overruled. I think he's
4 explaining the background for what he did. I'll overrule
5 that objection.

6 Go ahead, Dr. Gupta.

7 THE WITNESS: Yes, Your Honor. So, we -- first
8 thing was to develop a case definition within the confines
9 of which we will determine these people to be in. And so,
10 we turned out that there were about 20 people that met that
11 case definition for this particular outbreak.

12 Then we looked at where they lived, what kind of
13 services they came to, and what was provided to them
14 basically in the hospitals.

15 And I am going to refer a little bit to the report
16 because it has been awhile that I have reviewed this.

17 BY MS. KEARSE:

18 **Q.** Let me ask you this, Doctor. As part of your
19 investigation, did you also look into public health
20 interventions in regards to this incident?

21 **A.** We did.

22 **Q.** And did you have findings in regards to areas for
23 potential public health intervention in regards -- I'm
24 specifically looking at Page 2.

25 **A.** So, one of the things we found was that it was

1 important to have an actual real data system to be able to
2 act. This was our first instance of such a thing in the
3 State of West Virginia. So, we wanted to make sure that the
4 recommendation reflects having a system that monitors
5 overdoses.

6 The second was the continuum of care for overdoses.
7 So, one of the things that happened, as I mentioned before,
8 the treat them and street them, that often, these people
9 from overdose were let go from the emergency room. This was
10 an opportunity. This goes back to the social autopsy work,
11 that we had an opportunity to provide help that was not
12 there.

13 So, it was important for us to develop a system that we
14 can actually capture and help these people, knowing that the
15 outcome would be poor otherwise.

16 And, lastly, was the community level intervention that
17 focused on education and other -- other interventions at a
18 community level.

19 **Q.** And did you share these results and these interventions
20 and your analysis with members of the Cabell-Huntington
21 community?

22 **A.** Yes.

23 **Q.** And did you follow up on these interventions with
24 various community folks within Cabell-Huntington?

25 **A.** Yes. So, we began to think, okay, how do we work on

1 these recommendations moving forward? So one of the things
2 we created at that point was called Quick Response Teams, or
3 QRTs. QRTs are generally a team of a first responder, a
4 social worker and someone from the Health Department.

5 So, if someone in a hospital comes in and is discharged
6 home, within the next 24 to 72 hours, a QRT will go back to
7 that point and ask them, hey, would you like to -- what --
8 what are all the things we can help you with? Can we offer
9 you treatment? Can we offer you naloxone? Can we offer you
10 any other assistance?

11 The idea here was to prevent these people were dying
12 and overdosing and offering them, in a non-judgemental way,
13 treatment.

14 **Q.** And you worked specifically with folks from the
15 Huntington community to get that started?

16 **A.** Yes.

17 **Q.** Doctor, is there any other key findings from this
18 report that go into the intervention and forward-looking
19 prevention? And let me -- let me ask it a different way.

20 Similar to the other -- the Social Autopsy Report, is
21 this something of another type of autopsy from --

22 **A.** Yes.

23 MS. MAINIGI: Objection, leading.

24 BY MS. KEARSE:

25 **Q.** And within your findings, did you also -- in your

1 investigation, did you make recommendations based on your
2 investigation?

3 **A.** Sorry. Recommendations to whom?

4 **Q.** Within the report itself? Are the recommendations in
5 the report?

6 **A.** Yes. Page 13 onwards has recommendations specific to
7 the -- this particular outbreak.

8 **Q.** And if we go to just the very top of the
9 recommendations, is this -- I'm not going to have you read
10 them all, but are these the recommendations? And we'll go
11 over them. Generally speaking, opioid overdose is a public
12 health crisis in Cabell County. Was that your finding?

13 MS. MAINIGI: Objection, Your Honor. I think
14 we're going down the same road we were at about 15 minutes
15 ago. This is just Ms. Kearse testifying about something she
16 would like to quote later somewhere, but it's -- Dr. Gupta
17 has already reviewed his recommendations, I thought, from
18 Page 2 or 3 of the report. I don't know why we're doing it
19 again other than to read additional passages into the
20 record.

21 THE COURT: Well, these are the recommendations
22 from this report and he made other recommendations based on
23 the other report, didn't he?

24 MS. KEARSE: Yes, Your Honor. He touched on a
25 couple things in this report already.

1 THE COURT: And they probably overlap to some
2 extent.

3 MS. KEARSE: They might and that's why I'm going
4 to follow up, if we can -- just general speaking.

5 THE COURT: Overruled. I'm going to let him go
6 down this path a little ways.

7 MS. KEARSE: And, Your Honor, or --

8 BY MS. KEARSE:

9 Q. Dr. Gupta, this is specific to Cabell County; is that
10 correct?

11 A. Yes.

12 Q. And did you make some findings specific to Cabell
13 County on what they were dealing with in regards to the
14 opioid crisis?

15 A. Yes.

16 Q. And what was that?

17 A. There were -- the outbreak highlighted three potential
18 interventions that included surveillance, healthcare system
19 response and community response. And there are
20 recommendations within each category specific.

21 Q. And that's within the body of your recommendations?

22 A. Yes.

23 Q. And did you make a finding that the opioid overdoses of
24 health crisis in Cabell County --

25 MS. MAINIGI: Objection, Your Honor, leading and

1 testifying.

2 THE COURT: Sustained.

3 MS. KEARSE: Let the report speak for itself.

4 BY MS. KEARSE:

5 **Q.** Did you make a -- did you make a finding in regards to
6 the extent of the problems in Cabell County?

7 **A.** We were very clear in stating that opioid overdose is a
8 public health crisis in Cabell County.

9 MS. KEARSE: Your Honor, I would like to -- I
10 don't think I put this, the prior exhibit in, and I'll do
11 some cleanup at the end of the examination, but I would
12 offer this Document 4114a into evidence.

13 THE COURT: Is there any objection to 411?

14 MS. MAINIGI: Your Honor, I'll stand on my prior
15 objections to the report.

16 THE COURT: I'm going to -- I'm going to admit it.

17 **PLAINTIFF EXHIBIT P-41114a ADMITTED**

18 MS. KEARSE: And, Your Honor, just for the record,
19 so I'll formally admit Exhibit 44211, which was the 2016
20 West Virginia Overdose Fatality that we spent a good amount
21 of time on.

22 MS. MAINIGI: Same objections, Your Honor.

23 THE COURT: Same objection? All right. It's
24 admitted.

25 **PLAINTIFF EXHIBIT P-44211 ADMITTED**

1 BY MS. KEARSE:

2 Q. Dr. Gupta, in your role as a Public Health Commissioner
3 of West Virginia during this time, did you continue in
4 commissioning reports that were specific to opioids in West
5 Virginia that would include the Cabell-Huntington
6 communities?

7 A. Yes.

8 Q. And can you -- if you can tell us what those reports
9 are, we may go through a couple of others there, but I'm
10 hoping we can fast track this and we're not here all day,
11 but I'd like to just know, what other interest did you have
12 in actually doing further investigations in regards to these
13 issues?

14 A. In 2015, we had done the historical analysis to see the
15 trend data. We had our suspicions about the trends. Those
16 suspicions were confirmed in the Social Autopsy Report.
17 Then, when we started to see the challenges of outbreaks of
18 HIV, hepatitis, it was very important for us to characterize
19 diseases, also. So, those were some of the reports
20 additionally that I commissioned, directed, supervised.
21 That included the HIV and STD report, included Hepatitis
22 Profile Report for the State of West Virginia.

23 Q. What were the suspicions that you had that led you to
24 these reports?

25 MS. MAINIGI: Objection, Your Honor, foundation.

1 I don't think this can be a vehicle for just letting in his
2 free-flowing thoughts.

3 MS. KEARSE: Well, that's why I was asking him for
4 the basis of --

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: The basis for commissioning these
7 reports were that we were seeing -- I'm -- I'm going to back
8 up a little bit, Your Honor. Every time there's an outbreak
9 of, let's say, hepatitis C, what we do is call it contact
10 tracing. We find out who that positive lab is from, that
11 hospital or provider, and then we get the address and we go
12 back to the person.

13 Then we talk to them. Who all have you been
14 interacting with? It's an exponential process just like
15 we're doing for COVID with contact tracing.

16 We began to conduct these interviews and we were
17 finding information that was significantly concerning to us
18 during those interviews that led us to do this report.

19 BY MS. KEARSE:

20 Q. And I'm going to -- so that we're clear on the reports,
21 were there a number of reports -- and I'm not going to go
22 into detail with these if we can -- if I can at least make
23 these some general --

24 MS. KEARSE: Your Honor, may I approach?

25 THE COURT: Yes.

1 BY MS. KEARSE:

2 **Q.** Dr. Gupta, I'm handing you three documents, and I would
3 like you to identify them, and then we'll just skim over
4 them in as brief detail as possible. So, P-44277 (sic) is
5 titled the West Virginia Viral Hepatitis Epidemiologic
6 Profile 2017 and P-41904, Hepatitis B and Hepatitis C
7 Infection in West Virginia, April 2018, and P-41901. HIV
8 Epidemiologic Profile West Virginia, 2017 and ask if those
9 are the reports, and there may be more, but those are all
10 that I have regarding the subject matter you just testified
11 about?

12 **A.** These are.

13 **Q.** And, Dr. Gupta, similarly with the other reports, were
14 these commissioned by you in your capacity as the Public
15 Health Commissioner of the State of West Virginia pursuant
16 to statute?

17 **A.** Yes. They were commissioned by me, supervised by me
18 and directed by me, all three of these reports.

19 **Q.** And I handed you three different reports and I'm going
20 to ask you some questions. If there's something that is --
21 I've got to distinguish, let me know, but I want to ask you
22 what you did as part of your investigations that led you to
23 these reports?

24 **A.** So, when we were interviewing individuals on the ground
25 suffering from hepatitis B, hepatitis C, HIV, we asked a lot

1 of questions. The questions we asked is why? How did you
2 get this? Who else is involved? And one of the things we
3 were seeing is a lot of those are happening because of the
4 IV drug use of those individuals.

5 So, we wanted to understand both the rising case load
6 in West Virginia, but also, the trend analysis over time
7 because this was becoming more clear that it's related to
8 the IV drug use of individuals.

9 **Q.** And where did you get the data that you obtained in
10 these reports? Can you tell the Court how you went about,
11 in addition to talking with the data that that's provided
12 and that will be before His Honor?

13 **A.** So, in every state, including West Virginia, is the --
14 is the -- is where all of the data for all of these
15 infections is kept. So, that data for any outbreak comes
16 back to the Bureau for Public Health. So, if there's an
17 outbreak in McDowell County, we're going to get people in
18 McDowell County to work with the local Health Department in
19 McDowell County. And once we figure out how large the
20 outbreak is, how many people involved, that all gets
21 submitted into a database at Bureau of Public Health. And
22 then that gets annually submitted to the CDC.

23 And that's when you see some of the numbers come out at
24 CDC. They're not the CDC's numbers. Those are actually
25 West Virginia's numbers being fed to CDC and then, they go

1 to the media after that.

2 **Q.** And in regards to your methodology and collecting the
3 data, did you issue your findings specific to various
4 outbreaks within the state?

5 **A.** We conduct well over 200 outbreak investigations in the
6 state every single year. Most of these are protected by
7 state law from disclosure because they have individual
8 protected health information in them.

9 **Q.** Were you able to take the overarching data and have an
10 understanding of what the various -- the wheres, we talked
11 earlier we saw some of the maps, where this was occurring
12 within the state?

13 MS. MAINIGI: Objection, Your Honor. I'm having
14 trouble following. My objection is on foundation grounds,
15 but I don't know what the where or the what is here and,
16 therefore, I am having a challenge with foundation.

17 MS. KEARSE: Okay. I'll briefly go through.
18 Let's start with 41904.

19 THE COURT: I'll sustain the objection and give
20 you an opportunity to clarify.

21 MS. KEARSE: I will be -- I was probably trying to
22 fast forward some things, but I'll do them very quickly,
23 quickly there for Your Honor's foundation.

24 BY MS. KEARSE:

25 **Q.** 41904 is the hepatitis B and hepatitis C infection in

1 West Virginia, 2016 Surveillance Summary, and it's dated
2 April, 2018.

3 **A.** Yes.

4 **Q.** And to make sure we're clear on the specific reports,
5 does the methodology just described generally conform to
6 what you did in regards to the 2016 Surveillance Summary
7 that was published in 2018?

8 **A.** This report is in accordance with a particular West
9 Virginia Communicable Disease Rule, 64 CSR 7, that is within
10 the state statute. So, this is -- the report is in
11 compliance with the state statute and the methodology is
12 well-accepted methodology that it utilized by State
13 Departments all across the country.

14 **Q.** And is this also a public document?

15 **A.** It is.

16 **Q.** And my page when I -- when I was asking about the
17 wheres, I'll -- turn to Page 6. And did you do analysis --
18 or Page 5. Did you look at the geographical distributions
19 of your findings within that?

20 **A.** Yes.

21 **Q.** And did you go -- did you specifically look county to
22 county that you just testified, but specific to this report,
23 did you also include Cabell County in your analysis?

24 **A.** Yes.

25 **Q.** And is that reflected in Table 2 of this report?

1 **A.** Yes.

2 **Q.** And did you identify various counties that had various
3 numbers of the -- regarding the disease and outbreak?

4 **A.** For hepatitis B and C, yes.

5 **Q.** Okay. And just so we're clear, what was the purpose of
6 doing this investigation?

7 **A.** First of all, it is very important for the State to
8 know what's its caseload of these diseases, what is -- how
9 many outbreaks these diseases have had, what are the
10 treatments available and where for people to get to and, if
11 there is an insufficiency of that, then it is the
12 responsibility of the Commissioner to ensure that there are
13 proper treatments available. And then -- so it's what and
14 it's where, where are they happening.

15 And, lastly, where do we rank compared to the country.
16 So, looking at -- again, we don't rely on that, but it's
17 very important for us to know where are we on the spectrum?
18 Are we the worst in the country? Are we the best in the
19 country? Because the measurement tools we're using, it's
20 important to know if they're working or not.

21 **Q.** And within this report, did you also include your
22 conclusions or as on behalf of the State of West Virginia
23 Department of Public Health, did you also provide
24 conclusions to your analysis?

25 **A.** Yes.

1 **Q.** And if I need to lay the foundation for each report,
2 I'll just quickly go through the West Virginia Viral
3 Hepatitis Epidemiological Profile 2017, Exhibit 44227, and,
4 Dr. Gupta, I'll ask, was this report also commissioned by
5 you?

6 **A.** It was commissioned, supervised and directed by me.

7 **Q.** Okay. And under statute for the West Virginia -- for
8 the State of West Virginia?

9 **A.** Yes. This was a part of the responsibility and the
10 mandate that was in the -- rests in the Office of the
11 Commissioner.

12 **Q.** Okay. And specific to viral hepatitis within your
13 report, did you also look at the demographics in West
14 Virginia?

15 **A.** Yes.

16 **Q.** And did you also include analysis through the various
17 counties within the State of West Virginia?

18 **A.** Yes.

19 **Q.** And would that include Cabell-Huntington community?

20 **A.** Yes.

21 **Q.** Can you provide the Court some -- just your -- a
22 summary of your overall findings in regards to your study
23 and investigation and significance of that?

24 **A.** Sure. So, Your Honor, on Page 11 under the hepatitis B
25 surveillance, there's a map on the top and that map shows

1 the U. S. incidence of hepatitis B between the years of 2007
2 and '16. And you can look at that and it's 1.1, Your Honor.

3 You can look at the West Virginia's rates. It's 14.5.
4 So, literally, it's fourteen-fold higher rates in West
5 Virginia and they -- you can see where as the national rates
6 have stayed steady and maybe have come down from 2007, we
7 began to jump from somewhere between 2010 and '11 and we've
8 had a steep rise.

9 If you look at Page -- Your Honor, Page 13, top map for
10 hepatitis C now instead of B, both of these are transmitted
11 through various -- we can talk about it later, but you can
12 see here, for US, it's .8 from 2007 to '16 and for West
13 Virginia, it's 7.1 and that's, again, several-fold. That's
14 about nine times the national average. And you can still
15 see that it began to go up in 2010, but really spiked in
16 2015.

17 **Q.** And just briefly with -- what is the significance from
18 a public health perspective of having a population with
19 viral hepatitis?

20 **A.** So, hepatitis C is a lifelong disease, Your Honor.
21 Oftentimes, people get it, there's association with IV drug
22 use, sexual activities, as well as somewhat with alcohol and
23 it's very expensive to treat. That's the significance and
24 it may not go away. So, it's about -- it's expensive to
25 treat. Hepatitis B is the same type and same mechanism of

1 transfer and it can stay. And long-term. Hepatitis C is
2 very closely related to liver cancer. So, there's a high
3 risk of liver cancer in long-term if you got it.

4 **Q.** And just want to make sure we're tying things together
5 as you -- as we go through these. What was the significance
6 in regards to opioid use that you were finding hepatitis,
7 viral hepatitis, and hepatitis B and C?

8 MS. MAINIGI: Objection, Your Honor, foundation.
9 This is another causation question that there is absolutely
10 no basis to have this witness testify to. If it's in some
11 report, I'd like to be referred to it.

12 THE COURT: Yes.

13 BY MS. KEARSE:

14 **Q.** Well, let me ask you this, Doctor.

15 THE COURT: I'll sustain the objection.

16 BY MS. KEARSE:

17 **Q.** Within these reports, do you have a base -- do you --
18 do you describe the basis for doing these studies and
19 investigations?

20 **A.** Yes.

21 MS. MAINIGI: Same -- same objection, Your Honor,
22 in terms of where -- where we're going.

23 THE COURT: Overruled. You can answer that one,
24 if you can.

25 BY MS. KEARSE:

1 Q. Well, can you tell me which report we're specifically
2 on now?

3 A. On Page 12, the same report, the bottom graph that is
4 titled Risk Factors Reported in Acute Confirmed Hepatitis B
5 Cases, 2012 to 2016.

6 Q. Let me just make sure where we're --

7 A. Yes.

8 Q. Page 12 --

9 THE COURT: The question was, do you have a basis
10 for doing the studies in the investigations? Can you answer
11 that question?

12 THE WITNESS: Yes, I did, Your Honor. I can
13 repeat that, Your Honor.

14 THE COURT: Well, it seems to me your answer
15 wasn't responsive to the question, but maybe I --

16 THE WITNESS: I can repeat that, Your Honor.

17 THE COURT: Go ahead. Take another stab at it.

18 THE WITNESS: When we were conducting individual
19 outbreak investigations of hepatitis B and C, we were
20 getting information on individual interviews that they were
21 using a lot of IV drugs and that made us -- it was important
22 for us to then start to understand for the entire state what
23 was the role of IV drug as opposed to other things in
24 causation of hepatitis B and C.

25 THE COURT: Okay. You answered the question.

1 Thank you.

2 THE WITNESS: Thank you, sir.

3 BY MS. KEARSE:

4 Q. And I think I was asking what your findings were then,
5 as well.

6 A. So, Page 12, at the bottom, you can see the risk
7 factors reported in acute confirmed hepatitis B cases and
8 left top-hand corner says injection drug use, that blue
9 line, and you can see the blue line has gone way up above
10 anything else that has happened. And that confirmed our
11 suspicions that it was the IV drug use that was driving the
12 increased rates of hepatitis B in this particular slide.

13 Q. I just want to make sure I've just laid the foundation
14 for these three documents. Instead of trying to move
15 quickly through them, I just want to lay the third one that
16 we identified, that you identified, was that HIV
17 Epidemiologic Profile, 2017, P-41901, and just for --
18 particularly for our foundation purposes as a Public Health
19 Commissioner for the State of West Virginia, did you
20 actually conduct this investigation, as well, at your
21 direction?

22 A. I conducted -- I directed, commissioned and supervised
23 this study, as well.

24 Q. And, briefly, can you provide for the Court how you
25 went about conducting this investigation?

1 **A.** This investigation was conducted very -- with a lot of
2 the same rationale previously, but there's one very
3 important rationale in addition to that. We had one of the
4 largest outbreaks in the history of the United States in
5 Scott County, Indiana.

6 Following that outbreak in Indiana, the CDC had
7 commissioned a study to look at where are the most likely
8 counties and majority of those counties within our area were
9 in West Virginia.

10 So, they had raised all kinds of red flags to us as
11 West Virginia. You need to be keeping a close eye on HIV in
12 your state because you have the highest likelihood in the
13 nation of having an outbreak.

14 We wanted to make sure that we have all the data, all
15 the surveillance, all the epidemiological profile that we
16 could have to understand that and prevent outbreaks in the
17 future.

18 **Q.** And in line with your role as a Public Health
19 Commissioner, did you make findings and recommendations in
20 this report, as well?

21 **A.** Yes.

22 **Q.** And is there -- without going into any detail there, is
23 there anything specific to treatment or prevention in
24 regards to HIV?

25 MS. MAINIGI: Objection, Your Honor, foundation.

1 If we could go to a particular page, that would be helpful.

2 THE COURT: Well, are you asking him what
3 recommendation, if any, he made with regard to this?

4 MS. KEARSE: Yes.

5 THE COURT: He can answer that. Overruled.

6 THE WITNESS: Yes, Your Honor.

7 Your Honor, I'm going to -- I'm just going through it
8 so I can -- I can find it.

9 BY MS. KEARSE:

10 **Q.** I can direct you to where I'm going to ask the
11 questions specific to any recommendations that injection
12 drug use and HIV in regards to your findings and it begins
13 on Page 51. I know there's a lot of other issues within the
14 report. And I'll start with does it -- at Page 51, with
15 injection drug use and HIV, does that section include your
16 investigation and analysis?

17 **A.** Yes. The Page 52 also includes the study of the CDC
18 that I referred to a moment earlier, a map of how many
19 counties in green are at very high risk, very similar to
20 Scott County of having outbreak. This was provided to us by
21 CDC.

22 MS. KEARSE: And, again, just for our foundation
23 purposes, I offer these exhibits into evidence, if we've
24 satisfied the foundation.

25 MS. MAINIGI: Your Honor, I am making the same

1 objections as the prior reports.

2 THE COURT: Overruled. I'm going to admit them.

3 MS. KEARSE: Okay.

4 THE COURT: They're all three admitted.

5 **PLAINTIFF EXHIBITS P-41901, 41904 & 44227 ADMITTED**

6 MS. KEARSE: So, that's P-41901, 41904 and 44227.

7 BY MS. KEARSE:

8 **Q.** And just to be clear, Doctor, those analyses, even in
9 the last report I just showed you, also involves the
10 Huntington and Cabell communities?

11 **A.** Yes.

12 THE COURT: Is this a good place to take a break,
13 Ms. Kearse?

14 MS. KEARSE: Yeah. Maybe we'll fast forward now.

15 THE COURT: 15 minutes.

16 MS. KEARSE: Thank you, Your Honor.

17 (Recess taken)

18 THE COURT: Dr. Gupta, you can resume the
19 witness stand, sir.

20 BY MS. KEARSE:

21 **Q.** I'm going to wind this up. I just want to do a
22 couple follow-ups.

23 I'm going to -- you've got Exhibit Number 41901 in
24 front of you?

25 **A.** Yes.

1 Q. And I want to specifically ask you a question about
2 your finding on Page 51.

3 And specifically on Page 51 I want to ask you, did your
4 investigation reveal sufficient facts to determine whether
5 or not there is a relationship between prescription opioids
6 and heroin?

7 MS. MAINIGI: Objection, Your Honor, foundation.
8 I think that -- it appears that they're trying to backdoor
9 into gateway and we have an objection on foundation. And we
10 don't think that there's a correlation that you can draw
11 here vis-à-vis this report.

12 MS. KEARSE: Your Honor, that's why I asked him
13 the question if there is. He didn't say "yes" or "no" yet.
14 So --

15 MS. MAINIGI: But, Your Honor, --

16 THE COURT: I'm going to let him answer. I'm
17 going to overrule the objection and let him answer and I'll
18 have to sort this out after the fact. And we have a number
19 of problems I'm going to deal with such as the hearsay
20 within hearsay and so forth.

21 Go ahead, Ms. Mainigi. I got it right, didn't I?

22 MS. MAINIGI: You got it. Thank you, Your Honor.

23 Here's the problem, Your Honor, with the, with the
24 gateway issue.

25 I took his deposition, Dr. Gupta's deposition a few

1 weeks ago. And he told us at that deposition that the basis
2 for his gateway opinion was the Cicero report which is a
3 report that a bunch of experts in this case on both sides
4 are going to come testify about.

5 MS. KEARSE: Your Honor, that's for cross
6 examination.

7 THE COURT: Wait a minute. You can't both talk at
8 once.

9 MS. MAINIGI: He didn't say that it was based on
10 various studies and so forth that he had done. So I'm just
11 concerned that we're going to really muddy the record. And
12 I know Your Honor is going to sort it out later.

13 But if Your Honor -- I would ask that Your Honor
14 reconsider it. And if you don't reconsider it, I'd at least
15 like a very careful and complete foundation to be laid by
16 Ms. Kearse as to why he would have a basis for a gateway
17 opinion here.

18 THE COURT: Well, I think that's a good suggestion
19 and I'll overrule the objection subject to you doing that,
20 Ms. Kearse.

21 BY MS. KEARSE:

22 **Q.** Dr. Gupta, did your investigation reveal sufficient
23 facts to determine whether or not there is a
24 relationship between prescription opioids and heroin?

25 **A.** Yes.

1 **Q.** And can you explain that to the Court on what your
2 findings, led you to those findings? Well, let me ask you
3 this. You had sufficient facts to determine that. Can you
4 tell me what facts and then whether or not you found a
5 relationship?

6 **A.** Absolutely. So there's three buckets, Your Honor, of
7 these facts that we have to rely on to make the statement
8 that's made in the report here.

9 The first of it is the fact that we saw in the Social
10 Autopsy that confirmed our findings that people that were
11 interacting with the Controlled Substances Monitoring
12 Program were much more at 12 months and much fewer at 30
13 days. That 30 days, that meant that people are -- were
14 transitioning from prescription opioids to IV heroin, the
15 most cheaper alternative.

16 Second set of facts was the fact that we were
17 conducting the investigations, what we call contact tracing
18 for people suffering from HIV, hepatitis. We were
19 consistently gathering data that was showing the use of the
20 prescriptions. And now because the supply has reduced, they
21 had to transition to seek drugs, predominantly heroin.

22 And the third piece is that we were seeing a lot of
23 crack down on pill mills in West Virginia. And when that
24 was happening, what we saw as, as Bureau of Public Health,
25 State Health Department was every time a pill mill got shut

1 down, we saw three things come out of it. More people went
2 to the emergency room for their medication because they
3 can't find a doctor to prescribe it. They overdosed and
4 died. And some of them went to the alternative treatment on
5 the street which was cheaper and much more readily
6 available.

7 So the studies that are there in the national space,
8 they are consistent with my findings. I have said this and
9 I'll keep saying it. What we established in West Virginia
10 was for West Virginia. What the national studies were
11 establishing was actually for whatever that area was.

12 But there was a significant amount of consistency and
13 there's not an iota of doubt, not in West Virginia nor in
14 those studies, that that's the fact. That's what's
15 happening.

16 MS. MAINIGI: Your Honor, --

17 Go ahead, Mr. Hester.

18 MR. HESTER: Well, Your Honor, I was going to say
19 that, that there's nothing in this report that supports what
20 Dr. Gupta just said. He's just gone way beyond this, this
21 report.

22 On the face of the report, the only thing that's stated
23 in relation to this gateway issue is a citation to a study,
24 a nationwide study. So as to that, there's a hearsay
25 problem.

1 But what Dr. Gupta has just said is a completely new
2 set of opinions we've never heard before.

3 MS. MAINIGI: Your Honor, --

4 MS. KEARSE: Your Honor, I can lay a further
5 foundation on that.

6 THE COURT: Ms. Mainigi, go ahead.

7 MS. MAINIGI: I'm sorry. Dr. Gupta -- just to add
8 a couple of things to what Mr. Hester said, Dr. Gupta just
9 said there's no iota of doubt. I mean, that, that can't
10 possibly be an opinion he's allowed to offer here because
11 there's just no support for it.

12 The reference to pill mills is one of his three pieces
13 of support. We haven't seen any study that he did on pill
14 mills, any conclusion he even reviewed or commissioned or
15 authorized on pill mills, let alone -- what the standard is
16 is that he has to be a percipient witness with personal
17 knowledge and observation, not facts supplied by others.

18 That was the *Downey* case that Your Honor cited in his
19 opinion related to Dr. Gupta.

20 And, and furthermore, I think Your Honor found that Dr.
21 Gupta's testimony in this case is limited to his involvement
22 in the events giving rise to this litigation.

23 And we have gone report after report the entirety of
24 the late morning and the afternoon and we have not come
25 across any of these opinions until now. When all the

1 reports are put away, now is when they're going to try to
2 create some sort of link.

3 But the Social Autopsy report -- we spent an hour on
4 the Social Autopsy report. So where was gateway in the
5 Social Autopsy report?

6 Contact tracing, HIV. We just looked at three reports
7 that related to that area. We didn't even see the reference
8 to contact tracing in those reports. How is that now linked
9 to gateway?

10 This -- I, I recognize, Your Honor, this is a bench
11 trial. But to let in Dr. Gupta's views on gateway when
12 there's no support in any of his reports, he told us he had
13 the ability to commission reports on whatever he wanted.
14 Why didn't he commission a report on gateway?

15 We've got experts coming from the plaintiffs' side.
16 We've got experts coming from the defense side. There will
17 be plenty of people to speak to gateway. Dr. Gupta
18 shouldn't be allowed to give us his untested views on
19 gateway.

20 THE COURT: Is there anything in his report about
21 the gateway theory?

22 MS. KEARSE: Your Honor, this, this report, as
23 he's testified, started back in 2001 with his review of the
24 2001 and 2015, the Social Autopsy report, the further
25 outbreaks in Cabell County regarding this. And it's the

1 totality of taking those reports specific to the issues of
2 the Office of Public Health in West Virginia regards to his
3 number one, two, and three that he looked at was opioids and
4 how the opioids has affected West Virginia.

5 He has more than sufficiently laid the foundation on
6 these and can testify specifically as to what he observed,
7 what he investigated, and what he did in his official
8 capacity, and what he's presented to the public on these
9 issues there.

10 And he was deposed on these issues and, and discussed
11 these as well. I think there's cross-examination to, to
12 investigate those. But I think Dr. Gupta is well equipped
13 to do that and I think we can -- you know, if there's more
14 factual things there.

15 But that was my question, was there a factual basis
16 without his work as a Public Health Commissioner to make
17 that -- to determine whether or not there was a relationship
18 between prescription opioids and heroin.

19 MS. MAINIGI: Your Honor, one final point. I
20 apologize. There's the reference to the cross-examination.

21 You allowed a further deposition of Dr. Gupta for this
22 very purpose, to avoid surprise at trial. And that is the
23 right thing to do given that we -- that he was going to be
24 allowed to testify.

25 We asked him, Your Honor, what were his bases for his

1 gateway opinions. He testified about the reports, the
2 national reports he referred to. He did not say, "These are
3 the three additional buckets of facts that I have in my own
4 personal purview."

5 He did not do those because if he had, if he had given
6 us the answer several weeks ago that he gave us today for
7 the very first time, obviously we would have followed up
8 with it right then and there and been prepared to deal with
9 it here. But this is just surprise and ambush in terms of
10 trying to sneak in gateway.

11 THE COURT: Okay, Ms. Kearse, you get the last
12 shot.

13 MS. KEARSE: Your Honor, they took four more hours
14 of his deposition and he laid out a lot of other information
15 based on facts. And I simply asked the doctor if there's
16 data in the reports that support this.

17 And what we did was walk through these meticulously in
18 order for us to lay the facts and lay a foundation for his
19 work and investigation and observations as the chief of the
20 public health of the State of West Virginia on seeing what
21 the data was showing and what the facts were in order to
22 determine whether there's a relationship between
23 prescription opioids and heroin. And he was deposed on a
24 number of those issues there and has always been consistent
25 in his views on that.

1 THE COURT: But he didn't touch on this in his
2 deposition?

3 MS. KEARSE: Yes, he did, Your Honor.

4 THE COURT: Did you ask him about it?

5 MS. MAINIGI: I did, Your Honor. I asked him what
6 the bases were for his gateway opinion, and he referred me
7 to the Cicero national study.

8 If Your Honor was -- what I would suggest, Your Honor,
9 is if you'd like to just see some quick briefing on that and
10 hold on this question, we're happy to provide something on
11 it. And maybe Ms. Kearse can move to a different area.

12 MS. KEARSE: Well, Your Honor, I had simply asked
13 if the information is in the report.

14 THE COURT: Well, I think the thing to do is for
15 me to hear what he has to say. And in all likelihood, I'm
16 not going to consider it. But since this is a bench trial
17 and I want to make a complete record, but do it in just a
18 few questions and get it over with and I'll reserve ruling
19 on the objection. But I want to hear what he has to say.

20 BY MS. KEARSE:

21 **Q.** Is there data in your report, in addition to the
22 facts you just explained, that goes to this issue of
23 whether or not there is sufficient facts to determine,
24 or data to determine whether or not there is a
25 relationship between prescription opioids and heroin?

1 **A.** Your Honor, if I'm allowed to, since this is a
2 significant issue, I would like to have the ability to
3 explain the whole thing because there is some information
4 here that is being mischaracterized in terms of the
5 deposition.

6 MR. HESTER: I object to that. The question was:
7 "Is there data in your report?" I think the witness should
8 answer the -- sorry. I think the witness should answer the
9 question.

10 THE COURT: Yeah. Answer the specific question,
11 Dr. Gupta, please.

12 THE WITNESS: Yes, Your Honor.

13 Page 50 of the Social Autopsy report specifically
14 states that -- I'll read it and then I'll explain it also.

15 "In fact, at 12 months, 56 percent of decedents had
16 filled an opioid prescription and 37 percent of decedents
17 had filled a benzodiazepine prescription. By 30 days prior
18 to death, the percentage of decedents with an opioid
19 prescription had decreased to 25 percent which was the same
20 percent of decedents with a benzodiazepine prescription."

21 What that means, Your Honor, is those people were
22 filling prescriptions at four months before their death,
23 56 percent, only 25 percent had filled at 30 days.

24 So that means that the significance, about half of
25 those people quit filling prescriptions for controlled

1 substances by the time they got to 30 days before their
2 death.

3 Well, if they quit filling prescriptions, what did they
4 die of? They died of heroin and fentanyl. That is a very
5 clear pathway from prescription drugs to fentanyl and
6 heroin. It cannot be more clear.

7 THE COURT: Okay. Move on to something else.

8 BY MS. KEARSE:

9 Q. Two more things and we'll be done.

10 Doctor, in regards to your work with various cities and
11 counties, including the Cabell-Huntington community, have
12 you worked on harm reduction?

13 A. Yes.

14 Q. And specific to a lot of the reports we just talked
15 about, the Outbreak 2016, can you explain for the, the Court
16 what is harm reduction?

17 A. Harm reduction is a set of practices based in evidence
18 aimed at preventing further harm as a consequence of
19 substance use. But it could be applied to tobacco. So, for
20 example, when people go from smoking to vaping, that is
21 sometimes considered harm reduction.

22 The idea here for substance use disorder and people who
23 are suffering from substance use disorder is they might be
24 ready to get into treatment day one because, again, going
25 from addiction is a different concept.

1 So what we are trying to do is get them into screening
2 for diseases like HIV and hepatitis, give them clean
3 syringes so they cannot share syringes, get them naloxone,
4 offer them counseling and treatment, get them family
5 planning services, a set of services that actually helps to,
6 while they may or may not be ready for treatment directly,
7 but continue to engage the healthcare system in a
8 non-judgmental manner for these individuals so they can in
9 the long term understand and get engaged into treatment.

10 **Q.** And as a follow-up there, did you actually -- are you
11 familiar with the White Paper on harm reduction?

12 **A.** I am familiar with the White Paper that I commissioned
13 as Commissioner.

14 MS. KEARSE: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MS. KEARSE:

17 **Q.** I'm going to show you, Dr. Gupta, Exhibit 41913 and
18 ask if that's -- in your position as the Commissioner of
19 the Public Health for the State of West Virginia, did
20 you authorize this White Paper entitled "The Need For
21 Harm Reduction Programs in West Virginia, West Virginia
22 Department of Health and Human Services, Bureau for
23 Public Health" November 6, 2017?

24 **A.** Yes.

25 **Q.** And I'll simply ask for foundation purposes for the

1 admission of this document.

2 Can you tell the Court what your involvement was as the
3 Commissioner of Public Health in directing this White Paper
4 to be written?

5 **A.** Harm reduction services prior to my tenure was not
6 something that was happening in West Virginia. So I, I
7 initially began to launch the first -- help fund the first
8 program for harm reduction in Cabell-Huntington Health
9 Department, and subsequently utilized the best knowledge and
10 evidence available to create a White Paper that would help
11 advance the need for such practices and programs in the
12 State of West Virginia, especially following the CDC report
13 that showed that the State of West Virginia is at a very
14 high risk for outbreak of HIV.

15 MS. KEARSE: Your Honor, I'm not going to go
16 through this report, but I would just submit the report for
17 admission based on Dr. Gupta's testimony.

18 THE COURT: Any objection to the admission of this
19 report?

20 MS. MAINIGI: Your Honor, the same objection to
21 the prior reports.

22 THE COURT: I'll admit it. I'm admitting it under
23 Rule 803(8) of the rules of evidence.

24 BY MS. KEARSE:

25 **Q.** Dr. Gupta, as a follow-up with the various reports

1 that you have testified about today, did you take these
2 reports and provide a response and, and almost from
3 looking at the various interventions that could be dealt
4 with in regards to the opioid issues outlined in your
5 reports?

6 **A.** Yes.

7 MS. KEARSE: Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MS. KEARSE:

10 **Q.** Dr. Gupta, is this a document that you, that you
11 authored?

12 **A.** Yes. It's got my signature on it.

13 **Q.** And can you tell the Court what this is, what that
14 document is?

15 **A.** This is a letter to the Governor. And a copy of the
16 letter goes to the Senate, President, Speaker of the House,
17 and the Cabinet Secretary which basically states to them
18 that we have the state of -- in an effort to fight the
19 public health crisis of the highest order, we have developed
20 an opioid response plan for the State of West Virginia. We
21 attached a plan and, and asked for implementing these
22 recommendations.

23 **Q.** And what was your role in this report?

24 **A.** I created -- directed it. I created it. I supervised
25 it. And I commissioned it.

1 Q. And it was published in your official capacity?

2 A. Yes.

3 Q. And does it validate your findings?

4 A. Yes.

5 Q. And did you endorse its recommendations?

6 A. Yes. Similar to all of these reports, they go through
7 clearance process where I review them, each one of these
8 reports before going, becoming final and going to the next
9 step. So I did the same thing with this report as well.

10 Q. And they're based on sound public health methodology?

11 A. Yes.

12 Q. And can you briefly tell the Court what your findings
13 were and recommendations?

14 A. So these findings -- my job was to send this report on
15 to the Governor. But these findings resulted from bringing
16 a, a Task Force together.

17 And what that meant was while we were receiving the
18 Overdose Fatality Analysis results, Social Autopsy, we put
19 together under the auspices of the Office of Control Policy
20 a, a group of members that included John Hopkins School
21 of -- Bloomberg School of Public Health, Marshall
22 University, West Virginia University, and Office of Control
23 Policy.

24 And these are groups, they had public meetings with,
25 with well over 100 attendees in Charleston that included

1 congressional delegation staff and comments from them,
2 comments from substance use disorder sufferers, substance --
3 comments from treatment providers.

4 We matched this in-person activity with an ability for
5 West Virginians to provide comments to our proposal. We
6 received almost 500 comments from the public. We put the
7 data, all these comments, everything into the public
8 limelight. We created this report.

9 So these recommendations are just not recommendations,
10 but they are vetted through the people of West Virginia.
11 And these recommendations are categorized into six
12 categories.

13 Would you like me to go through these?

14 **Q.** Just very briefly. I think that Your Honor will have
15 it. We'll move it into evidence, but just briefly.

16 **A.** There's categories of prevention, early intervention,
17 treatment, overdose reversal, supportive families, and
18 recovery. There's 12 recommendations across those six
19 categories.

20 MS. KEARSE: Your Honor, I move Exhibit 44223 into
21 evidence.

22 THE COURT: Any objection?

23 MS. MAINIGI: Same objections, Your Honor.

24 THE COURT: All right. It's admitted.

25 BY MS. KEARSE:

1 **Q.** I want to just -- we are just about there. I want
2 to just make clear one or two things with -- before we
3 sit down.

4 Before we sit down with that, I'd like to just do one
5 follow-up on Exhibit 41213 which was the West Virginia Drug
6 Overdose Death Historical Overview 2001 to 2015. So we're
7 going full circle to close the circle and sit down.

8 And I want to -- we talked earlier about Figure 1, and
9 I just wanted to follow up on that.

10 Is there a reason -- well, let me back up one second.
11 Is there a reason why this report starts in 2001?

12 **A.** Yes.

13 **Q.** Okay. And why did it not start until 2001?

14 **A.** I -- so in my, in my Bureau, we have the records all
15 the way 100 years. When I looked at that, what I found was
16 in 1999 West Virginia's overdose death rate was below the
17 United States' death rate.

18 In 2001 is the first time we crossed the United States'
19 overdose death rates and we've never stopped since then.
20 That's why I went to 2001 as opposed to 2000 or 1999. It
21 was a time when West Virginia's overdose death rates were
22 below the U.S. death rates.

23 **Q.** And I wanted to -- I had my notes. You may have said
24 this, but I wanted to make this clear.

25 Did you validate Figure 1 from other sources other than

1 the *New York Times* before publishing this report?

2 **A.** Your Honor, I want to explain this a little bit. I
3 said "yes" before.

4 This data in the *New York Times* comes from CDC. CDC
5 data comes from my organization. So we provided the data,
6 Bureau of Public Health, to the CDC which then provided it
7 to the *New York Times* to publish it.

8 So when I say I validated it, it's my data, nobody
9 else's data.

10 MS. MAINIGI: Your Honor, I object and move to
11 strike that answer. I don't think that's a group that
12 provides national data.

13 THE COURT: Well, overruled.

14 Go ahead, Ms. Kearse.

15 BY MS. KEARSE:

16 **Q.** Doctor, did you provide this data?

17 **A.** We provided data for West Virginia. I did not mean
18 national. I meant specific to West Virginia. And you can
19 see West Virginia, as I mentioned, in 2003 was lighted up
20 when the rest of the country was not.

21 **Q.** And specific to this, to this, the figure itself, you
22 validated it with the CDC data?

23 **A.** Yes. And CDC national data is available for anyone to
24 look at and validate, and we did that. We would not put a
25 figure in as state government of West Virginia if we could

1 not validate that.

2 Q. And when we started back early in the day, you referred
3 to your findings as -- and we've referenced the canary in
4 the coal mine. What did you mean by that in regards to
5 these reports?

6 MS. MAINIGI: Objection, Your Honor.

7 MS. KEARSE: I'm just asking for clarification,
8 Your Honor.

9 THE COURT: Overruled. You can answer it.

10 THE WITNESS: Thank you, Your Honor.

11 Your Honor, what I meant was back in 2003, we could see
12 this, that this is happening in West Virginia. And we saw
13 what happened over the years and --

14 MS. MAINIGI: Objection, Your Honor. Dr. Gupta
15 was not in West Virginia in 2003. He should not be allowed
16 to provide this answer. He testified at the beginning that
17 he moved to West Virginia in 2009.

18 MS. KEARSE: Your Honor, I believe he testified
19 that he spent his first time here going back from 2001 to
20 2015 in order to do his work and do what he was commissioned
21 to do, to lead the State of West Virginia in public health
22 and specifically --

23 THE COURT: Well, I'll sustain the objection. We
24 need to wrap this up. And we all know what a canary in the
25 coal mine was and I think I can draw the right conclusion

1 from that.

2 MS. KEARSE: Okay, good. I know some people may
3 not know that, Your Honor, but --

4 Thank you, Dr. Gupta.

5 Appreciate it, Your Honor.

6 THE COURT: If the canary died, that meant there
7 was methane in the mine. Right?

8 MS. KEARSE: Yep, Your Honor.

9 THE COURT: I'm educating these people who aren't
10 West Virginians.

11 MS. KEARSE: That's right. That's why I said some
12 may not understand what that meant. Thank you, Your Honor.

13 MS. MAINIGI: Your Honor, could we have a few
14 minutes to transition?

15 THE COURT: Yes. We'll be in recess. Can you do
16 it in five?

17 MS. MAINIGI: Yes, Your Honor.

18 (Recess taken from 4:15 p.m. until 4:22 p.m.)

19 THE COURT: Is Dr. Gupta in the courtroom? Here
20 he comes.

21 MS. MAINIGI: Is it okay to proceed, Your Honor?

22 THE COURT: Yes, you may.

23 MS. MAINIGI: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MS. MAINIGI:

1 Q. Good afternoon, Dr. Gupta.

2 A. Good afternoon.

3 Q. Dr. Gupta, I'm hoping you still have in front of you
4 the report that's entitled the 2016 West Virginia Overdose
5 Fatality Analysis.

6 A. Got it.

7 Q. Now, Page 6 of that report, Dr. Gupta, presents the
8 summary of your key findings; correct?

9 A. Correct.

10 Q. And distributors are not mentioned anywhere in your key
11 findings; correct?

12 A. Correct.

13 Q. Page 10 of the report, let's turn to that. Now, Page
14 10 of the report --

15 Why don't you go ahead and put that up, Page 10,
16 P-44211.

17 Page 10 of the report mentions this concept of
18 polypharmacy; is that right, Dr. Gupta?

19 A. That's correct.

20 Q. And it says specifically, "Deaths related to drug
21 overdose are often preceded by substance misuse, substance
22 use disorder, and addiction. Increasingly, polypharmacy,
23 the use of multiple drugs, is observed among overdose
24 decedents in West Virginia."

25 Do you see that?

1 **A.** That's a repetition of what we discussed already during
2 the day. If you remember the 2001 to 2015, you're just
3 repeating it but, yes.

4 **Q.** Okay. So you're familiar obviously with the term
5 "polypharmacy."

6 **A.** That's what it says.

7 **Q.** And your conclusion was, in this particular part of the
8 report, that among the 830 West Virginians that were
9 included in this report who died from overdose in 2016,
10 86 percent had multiple drugs in their system at the time of
11 death; correct?

12 **A.** That's my conclusion.

13 **Q.** Now, at Page 58 of the report is the summary of your
14 key recommendations; is that right?

15 **A.** It's only the summary.

16 **Q.** I'm sorry. You said it's only the summary?

17 **A.** As I said before to Ms. Kearse, this is not the entire
18 recommendation. It's just the summary.

19 **Q.** That's the summary of your key recommendations. Okay.
20 And the purpose of your report, or one purpose of your
21 report, as I understand it, is to create a reproducible
22 model for state actions to address the opioid epidemic;
23 right?

24 **A.** I'd have to go back to the Executive Summary and read
25 through it again. Give me one second.

1 (Pause)

2 The purpose of this report is to study West Virginia's
3 overdose deaths to identify opportunities for intervention
4 in the 12 months prior to death.

5 **Q.** Will you take a look on Page 6 onto Page 7 of your
6 report where I think the purpose of the report is described.
7 Do you see that? Just let me know when you get there.

8 **A.** I'm there.

9 **Q.** Okay. So the middle paragraph at the bottom of Page 6
10 says, "The purpose of this work is to --" and then it lists
11 several factors; correct?

12 **A.** Correct.

13 **Q.** Okay. If we turn the page to Page 7, could you read
14 out loud Number 3, what the third purpose of the report is?

15 **A.** I would like to read out the whole thing if you don't
16 mind.

17 **Q.** I would like you to read out Number 3, please.

18 **A.** Your Honor, --

19 THE COURT: You have to answer her question, Dr.
20 Gupta.

21 **A.** To create a reproducible model for state action to
22 address the opioid epidemic.

23 BY MS. MAINIGI:

24 **Q.** Okay. So one of your purposes in this report that
25 you commissioned, directed, and personally supervised

1 was to create a reproducible model for state actions to
2 address the opioid epidemic; correct?

3 **A.** Correct.

4 **Q.** Okay. So coming back to the recommendations, Page 58,
5 please.

6 **A.** I'm here.

7 **Q.** So your report lists eight recommendations to address
8 the opioid problem; correct?

9 **A.** Correct.

10 **Q.** The report does not propose new licensing requirements
11 for wholesale distributors; correct?

12 **A.** That's correct. But, at the same time, it does not
13 propose --

14 **Q.** Dr. Gupta, I'm looking for a "yes" or a "no," sir.

15 THE COURT: Answer her question.

16 BY MS. MAINIGI:

17 **Q.** Dr. Gupta, does -- is it fair to say, or correct to
18 say your report in your summary of key recommendations,
19 it doesn't propose new reporting requirements to the
20 Board of Pharmacy or the DEA for wholesale distributors,
21 does it?

22 **A.** No, because that's not in the purview of the Bureau.

23 **Q.** Dr. Gupta, your key recommendations do not include any
24 recommendations for new physical security requirements for
25 wholesale distributors, do they?

1 **A.** No, because it's not within the purview of the Bureau
2 of Public Health.

3 **Q.** Dr. Gupta, your key recommendations didn't propose
4 limits on how many doses of prescription opioids should be
5 distributed by wholesale distributors; correct?

6 **A.** No, because it's not in the purview of the Bureau of
7 Public Health.

8 **Q.** Your summary of key recommendations doesn't propose
9 sharing information from law enforcement or regulators with
10 distributors, does it, Dr. Gupta?

11 **A.** No. The Bureau of Public Health does not regulate law
12 enforcement or distributors.

13 **Q.** And your key recommendations don't propose really
14 anything about distributors' conduct at all; correct?

15 **A.** No, correct, because the Bureau of Public Health does
16 not regulate distributors.

17 **Q.** There are no recommendations here related to
18 distributors; correct?

19 **A.** Correct, because the Bureau of Public Health does not
20 regulate the conduct of distributors.

21 **Q.** You can set that report aside, Dr. Gupta. If you could
22 pull back out your 2018 outbreak report, sir.

23 MR. FARRELL: Counsel, could you give me the
24 number?

25 MS. MAINIGI: I think it's P-4114-A.

1 BY MS. MAINIGI:

2 Q. Dr. Gupta, this was the report that related to a
3 specific cluster of outbreaks that occurred on
4 August 15th, 2016; is that right?

5 A. Yes.

6 Q. And there was also a public safety investigation that
7 went on in addition to the public health investigation;
8 correct?

9 A. I do not recall that part.

10 Q. Okay. Are you aware that a comprehensive toxicology
11 analysis was performed in connection with this incident?

12 A. It should have been. Again, I don't 100 percent
13 recall, but I'm pretty certain it would have been.

14 Q. Are you aware that the toxicology testing identified
15 fentanyl in many of the victims?

16 MR. FARRELL: Objection, Your Honor, outside the
17 scope of the report that he was restricted to.

18 THE COURT: Overruled. You can answer the
19 question, Dr. Gupta.

20 THE WITNESS: If it's here, it's there. If it's
21 not here, then I wasn't -- that wasn't something I recall at
22 this point.

23 BY MS. MAINIGI:

24 Q. Okay. This was another report that you
25 commissioned, directed, and personally supervised;

1 right?

2 **A.** Yes.

3 **Q.** Now, you're aware that this report is referring to
4 illegally manufactured fentanyl; correct?

5 **A.** I'm sorry, you'll have to point me where that is.

6 **Q.** Did you review this report before you came to testify?

7 **A.** I have not recently reviewed this report.

8 **Q.** Now, I assume you're aware that illegally manufactured
9 fentanyl does not come from Cardinal Health or ABDC or
10 McKesson; correct?

11 **A.** That's an assumption. I mean, I would assume that, but
12 I'm not going to make an assumption like that.

13 **Q.** Are you familiar with a fentanyl analogue called -- and
14 I may mispronounce it so you can correct me -- carfentanil?

15 **A.** I am.

16 **Q.** How do you pronounce that?

17 **A.** Carfentanil.

18 **Q.** Carfentanil?

19 **A.** Just like it's spelled.

20 **Q.** Okay. And you're aware that carfentanil does not come
21 from Cardinal Health, ABDC, or McKesson; correct?

22 **A.** Ms. Mainigi, one of the reasons I'm very familiar with
23 spelling and speaking carfentanil is because I see that a
24 lot. Now, I'm not aware --

25 **Q.** Dr. Gupta, --

1 **A.** But to answer -- if you let me, I'll answer you. But
2 I'm not aware that distributors are distributing that, the
3 ones you're talking about.

4 **Q.** Are you aware, Dr. Gupta, that, in fact, a resident of
5 Akron, Ohio, was convicted of heroin, fentanyl, and
6 carfentanil distribution in connection with this incident
7 that is the subject matter of your report?

8 **A.** Not being a law enforcement individual, no.

9 **Q.** Now, this report which you haven't read recently, this
10 report doesn't connect any distributor to this outbreak;
11 correct?

12 **A.** Distributor conduct was not at the point of
13 investigation of this report.

14 **Q.** We can set that report aside. Let's jump over to the
15 2018 Opioid Response Plan, please.

16 **A.** Got it.

17 MR. FARRELL: Counsel, could we get a number?

18 MS. MAINIGI: Yes. Give me one second. A lot of
19 reports that we went over. I believe it is P-44223.

20 BY MS. MAINIGI:

21 **Q.** 2018 was your last year as Commissioner; is that
22 right?

23 **A.** Yes.

24 **Q.** And you made a plan for harm reduction, as you
25 testified; correct?

1 **A.** Amongst several other things, yes.

2 **Q.** You created it, directed it, and oversaw it; correct?

3 **A.** Yes.

4 **Q.** And then you testified you reviewed every step of it;
5 right?

6 **A.** I supervised, directed, commissioned.

7 **Q.** And I think you testified that you based your response
8 plan on the best knowledge available; correct?

9 **A.** Correct.

10 **Q.** Vetted through the people of West Virginia; right?

11 **A.** Yes.

12 **Q.** And it was your office's plan for what to do about the
13 opioid problem; correct?

14 **A.** It was, it was a plan that was set through the Office
15 of Drug Control Policy. But, of course, I was intricately
16 involved as I testified earlier.

17 **Q.** Turning to Page 2 of the report, you have, as I think
18 you testified earlier, 12 steps of recommendations; correct?

19 **A.** Yes.

20 **Q.** Starting at the bottom of Page 2 and going on to Page
21 3; right?

22 **A.** 4 also I think, Page 4.

23 **Q.** Now -- right. The 12 go onto Page 4 also. So in this
24 set of recommendations, which you entitled The Opioid
25 Response Plan for the State of West Virginia, you didn't

1 recommend any new licensing requirements for distributors;
2 correct?

3 **A.** I had no authority to recommend that so, no, I did not.

4 **Q.** You didn't propose any new reporting requirements for
5 distributors; correct?

6 **A.** I had no authority to -- for distributors' conduct so,
7 no, I did not.

8 **Q.** You didn't propose any new physical security
9 requirements for distributors; correct?

10 **A.** I did not have any authority over distributors'
11 conduct, so I did not, no.

12 **Q.** And you didn't propose any limits on the number of
13 doses of the opioids that could be distributed; correct?

14 **A.** That's not correct.

15 **Q.** Can you point me to the specific number, please, on
16 your recommendations?

17 **A.** If you look at -- under "Prevention" on Page 1, Number
18 1 and Number 2.

19 **Q.** "West Virginia should expand the authority of medical
20 professional boards and public health officials to address
21 inappropriate prescribing of pain medications."

22 Is that what you're referring to?

23 **A.** That's exactly one of the two.

24 **Q.** And doctors and other medical professionals prescribe
25 pain medications in West Virginia; correct?

1 **A.** Correct.

2 **Q.** And you were seeking to get the boards that regulate
3 those medical professionals, doctors and medical
4 professionals to get those doctors to prescribe less;
5 correct?

6 **A.** Correct.

7 Your Honor, there's a lot of -- can I please explain at
8 some point?

9 **Q.** Dr. Gupta, that answers my particular question.

10 THE COURT: I'm going to let him explain his
11 answer.

12 Go ahead.

13 THE WITNESS: One of the problems that was
14 happening, we had upstream issues and we were drowning. It
15 was flooding. One of the challenges we had is we would try
16 to put sandbags. This report is the equivalent of putting
17 sandbags when your house is flooding.

18 So what happened was that all this volume that came
19 into the State of West Virginia, we had no control over.
20 What we could do, we were doing to the best of our ability,
21 the best of our care. We were doing that.

22 So all these questions I'm answering as you like me to,
23 but the fact of the matter is we were drowning and we didn't
24 open the floodgates.

25 BY MS. MAINIGI:

1 Q. Thank you, Dr. Gupta. Number 2 is another
2 recommendation you referenced; correct?

3 A. Yes.

4 Q. Okay. "West Virginia should limit the duration of
5 initial opioid prescriptions." Is that right?

6 A. Yes.

7 Q. And there was a recommendation that resulted perhaps in
8 part in the Opioid Reduction Act; is that right?

9 A. Yes, it's an attempt to reduce the volume, the flood,
10 reduce the water, sandbag.

11 Q. And, so, with -- we'll go over the Opioid Reduction Act
12 a little bit later. But with the Opioid Reduction Act and
13 this recommendation, once again you were seeking to train
14 and limit medical professionals in their prescription of
15 opioid medications; correct?

16 A. Yes.

17 Q. And, so, one of your recommendations was to give the
18 medical boards and public health officials more authority to
19 address inappropriate prescribing as you call it; correct?

20 A. That was another sandbag, yes.

21 Q. And the other recommendation was to limit the duration
22 of initial opioid prescriptions; right?

23 A. Yes, another sandbag.

24 Q. And this report in particular said that what was
25 driving the unprecedented increase in overdose deaths was

1 illegally sourced fentanyl; correct?

2 **A.** Could you point me to where you're reading from,
3 please?

4 **Q.** Let's turn to Page 4, middle paragraph, middle large
5 paragraph about two-thirds of the way down. "The fentanyl
6 driving the unprecedented increase in deaths is illegally
7 sourced and generally not of pharmaceutical origin."

8 Do you see that?

9 **A.** I see that, Ms. Mainigi. I would, I would -- that's
10 not a complete statement. The complete statement is on top
11 of the Executive Summary which says, "Driving this public
12 health crisis is the opioid epidemic, a dual challenge
13 involving both prescribed opioids such as oxycodone and
14 illicit opioids including heroin and fentanyl." That's a
15 complete statement.

16 **Q.** Go ahead and set that one aside, Dr. Gupta.

17 Let's turn to your 2001 to 2015 West Virginia Drug
18 Overdose Death Historical Overview, please. That is
19 P-41213.

20 **A.** Okay.

21 **Q.** Now, if you could turn to Page 4, this is another
22 report I think you testified that you commissioned, oversaw,
23 so forth; correct?

24 **A.** Yes.

25 **Q.** Okay. So Page 4, the penultimate paragraph that begins

1 with "Prior to 2012," do you see that? I'm going to let you
2 find it first.

3 **A.** Which number paragraph is that?

4 **Q.** We'll go ahead and highlight it. "Prior to 2012" is
5 the sentence we're going to highlight.

6 **A.** I can see that now.

7 **Q.** Okay. So that sentence reads, "Prior to 2012, drug
8 overdose deaths were predominantly due to prescription drugs
9 such as methadone and oxycodone being used for non-medical
10 purposes."

11 You agree with that statement; correct?

12 **A.** I agree with that statement and the following
13 statement.

14 **Q.** Now, isn't it correct, Dr. Gupta, that this report
15 focuses on drug overdose deaths from many drugs, not just
16 opioids?

17 **A.** It focuses on the deaths of individuals, Ms. Mainigi,
18 West Virginians and what, what all is in that.

19 **Q.** And the focus of the report, therefore, is not just on
20 opioids but also cocaine, meth, tranquilizers, benzos,
21 stimulants; --

22 **A.** The focus --

23 **Q.** -- correct?

24 **A.** The focus of the report is on whatever is killing West
25 Virginians.

1 Q. And those were -- some of the drugs I listed were some
2 of the drugs killing West Virginians; correct?

3 A. That's correct.

4 Q. And when it relates to prescription drugs, if you take
5 a look at the bottom of Page 5, do you see the paragraph
6 that begins with, "The remainder of this drug overdose
7 report will focus on 15 years of West Virginia data for the
8 following drugs." And then it goes on to list a number of
9 drugs. Do you see that?

10 A. Ms. Mainigi, you're not allowing me to answer the full
11 sentence. So I would like to --

12 Q. Dr. Gupta, please just get to -- please get to this
13 part of the transcript. You obviously had an opportunity to
14 discuss other parts of it. I'd like to draw your attention
15 to this paragraph. Are you there?

16 A. I'm here.

17 Q. Okay. So we see a reference to the same drugs that we
18 were just talking about; right? It's a wide variety of
19 drugs that are described in this paragraph?

20 A. In the context -- I don't know what the context is or
21 what you're asking me the question, so I cannot answer that.

22 Q. Okay. Do you see a reference once again to
23 prescription-type medications? Do you see that?

24 A. I do not see only prescription-type medications.

25 Q. Do you see a reference to prescription-type

1 medications?

2 **A.** I see cocaine, methamphetamine, and prescription-type
3 medications.

4 **Q.** And do you see that it says "prescription-type
5 medications that are used for non-medical purposes, i.e."
6 and then it provides examples. Do you see that?

7 **A.** I see that.

8 **Q.** Now, are you aware that this report also says that most
9 drug overdose deaths involve multiple substances?

10 **A.** I've been asked about three times that and I've said
11 "yes."

12 **Q.** I think that was a different report that said that;
13 correct?

14 **A.** You're repeating everything in the morning, but that's
15 fine.

16 **Q.** And that's called polypharmacy, the multiple --

17 **A.** We just went over that. Yes, ma'am.

18 **Q.** And what that means is any individual death may involve
19 multiple types of drugs; right?

20 **A.** Your Honor, can I explain that again?

21 THE COURT: Yes, you can explain your answer.

22 THE WITNESS: So we go back to the issue of people
23 suffering from substance abuse disorder and addiction. When
24 somebody is suffering from addiction, they're going to get
25 oxycodone one minute. They're going to try to find heroin

1 the next minute. And they're always searching for something
2 that they can get that's affordable quickly and available.

3 In that case, if they're dying because of one
4 substance, we do tend to find other substances because it's
5 not that they're taking it for the treatment, but it's
6 because the volume is so much those drugs in the system and
7 out in the community that they're getting and seeking
8 whatever they can find. And that's the reason we're having
9 polypharmacy. That's my answer.

10 **Q.** If you could turn to Page 8, Dr. Gupta.

11 **A.** Yes.

12 **Q.** Perfect. And I think that top paragraph, it states --
13 it talks about polypharmacy, and then it states, "As such,
14 overdose deaths presented that involve one particular drug
15 are rarely mutually exclusive from other overdose deaths."

16 Do you see that statement?

17 **A.** Yes, I see that statement.

18 **Q.** And I assume that's a statement you agree with in this
19 report that you commissioned?

20 **A.** I think that statement proves the so-called gateway
21 theory that we've been talking about.

22 MS. MAINIGI: Your Honor, I move to strike as
23 nonresponsive.

24 THE COURT: All right. Motion is granted.

25 BY MS. MAINIGI:

1 Q. Turn to Page 24, please, Dr. Gupta, same report.

2 A. I'm here.

3 Q. I'm not quite there. Okay. I think this was where you
4 talked about the recommendations when Ms. Kearse was asking
5 you questions about this report; correct?

6 A. I have to go back and look at what the recommendation
7 section is.

8 Q. What I'm looking at on Page 24 is that middle paragraph
9 that starts with, "What next steps can be taken to make a
10 difference with these troubling problems?"

11 A. Yeah. This is not a recommendation. This is quotes
12 from the former West Virginia Governor.

13 Q. Okay. I do believe we can go back later and
14 double-check, but I do believe as I heard Ms. Kearse ask you
15 about this section of the report, I wrote it down. You
16 characterized these as some of your recommendations. Is
17 that not right? These weren't your recommendations?

18 A. She asked me for the ones in the paragraph above,
19 Ms. Mainigi, and I'm happy to repeat all that. I'm happy to
20 really. But this is not what she referred to.

21 Q. Okay. With respect to your recommendations here, I
22 take it you agree that there are no recommendations related
23 to wholesale distributors?

24 A. This report was not designed to look at recommendations
25 for wholesale distributors.

1 Q. So that's correct that there were no recommendations --

2 A. There were no recommendations.

3 Q. -- for wholesale distributors?

4 A. Yes.

5 Q. And, in fact, the report doesn't even mention
6 distributors, does it?

7 A. The report was not designed to look at the wholesale
8 distributors' conduct.

9 Q. And this is a report that you commissioned and it's
10 entitled "West Virginia Drug Overdose Deaths Historical
11 Overview 2001 to 2015." Correct?

12 A. Yes.

13 Q. Now, there's a reference on that Page 24 to CDC
14 guidelines. Do you see that?

15 A. I see that.

16 Q. Okay. And the CDC guidelines that are referenced there
17 were guidelines that came out around this time period when
18 you had put this report together that made recommendations
19 to limit the prescribing of opioids; correct?

20 A. I think that's not the proper characterization of the
21 CDC guidelines. I can provide you more context to that.
22 Would you like me to?

23 Q. No, thank you. But would you say that the CDC
24 guidelines did result in recommendations being put out that
25 attempted to limit the supply of prescription opioids that

1 doctors were prescribing?

2 **A.** Ms. Mainigi, there are multiple safety guidelines, if
3 you allow me to explain. I'm just trying to help, help you
4 and others understand what those were.

5 So CDC guidelines were issued I believe in March of
6 2016 that dealt for the first time in the history of this
7 country with the proper prescribing of opioids for chronic
8 pain. And those are the ones I believe you're referring to.
9 And in West Virginia Governor Tomblin was the first one in
10 the country to adopt the CDC guidelines.

11 **Q.** So they were recommendations to doctors -- the CDC made
12 recommendations to doctors about the prescribing of opioids
13 for chronic pain; correct?

14 **A.** These guidelines were about the evidence and the
15 science around chronic pain which didn't exist. So all of
16 these pain pills that were there, the CDC guidelines were an
17 attempt to put in science, what science exists behind
18 providing opioids for chronic pain and what doesn't. And
19 they didn't find much.

20 **Q.** Dr. Gupta, your report on Hepatitis B and Hepatitis C
21 infection in West Virginia, if you could pull that up,
22 please, sir.

23 **A.** I have it.

24 **Q.** Okay. Is it fair to say, then, that you would not have
25 made any recommendations related to distributors in this

1 report either?

2 **A.** We were not looking to distributors in this report.

3 **Q.** And the same question for your Vital Hepatitis
4 Epidemiologic Profile 2017, P-44227. You didn't make any
5 recommendations related to distributors in this report
6 either?

7 **A.** The distributors' conduct was not being validated
8 through this report.

9 **Q.** And the White Paper that you wrote, the need for harm
10 reduction programs in West Virginia, November 6th, 2017, Dr.
11 Gupta, that doesn't mention distributors either; correct?

12 **A.** Similarly, the White Paper was another sandbag in
13 addition to all these reports. But it was not intended to
14 be a document to evaluate the conduct of the distributors.

15 **Q.** And then your HIV Epidemiologic Profile West Virginia
16 2017, P-41901, that also does not mention distributors;
17 correct?

18 **A.** This was another sandbag in the flood, but not intended
19 to aim -- take aim at the distributors' conduct.

20 MS. MAINIGI: Your Honor, I do have more. It
21 might be helpful for us to break now for the evening and
22 then I can get my act together overnight and shorten this.

23 THE COURT: Sounds like a sound suggestion to me,
24 Ms. Mainigi.

25 MR. FARRELL: Judge, if I may.

1 THE COURT: Yes.

2 MR. FARRELL: We can do this outside the presence
3 of the witness, but there are two reasons.

4 One is for other reasons Dr. Gupta needs to get on the
5 road. So if we have some remote -- if there's some short
6 period of time that is required to finish today, the
7 plaintiffs are willing to stay late.

8 But, nonetheless, if we are going to come back tomorrow
9 since you are taking all of the video evidence in chambers,
10 we'd also kind of like to get an idea of how much more cross
11 is left so we can plan witnesses for tomorrow.

12 MS. MAINIGI: Well, I can certainly let the
13 plaintiffs know this evening, Your Honor, especially after I
14 consult with co-counsel who I don't know right now how much
15 they may have. And how much they have might be dependent on
16 what I tell them I have.

17 And, so, I do think it's going to warrant a
18 conversation amongst us all. I think we will obviously try
19 to be as expeditious as possible and try to get Dr. Gupta
20 out as quickly as we, as we certainly can. But I'm happy to
21 give Mr. Farrell a call this evening and give him some plan.

22 THE COURT: Do you have plans now for when you're
23 going to leave and so forth? I know you have a situation
24 that requires you --

25 THE WITNESS: Yes. The, the plans I had last

1 night changed as you're aware, Your Honor, and I would like
2 to leave as quickly as possible.

3 THE COURT: Well, we need to finish your testimony
4 and that may take some time. And there's not much I can do
5 about that, Dr. Gupta. I'm sorry.

6 THE WITNESS: I'll make myself available to Your
7 Honor.

8 THE COURT: All right.

9 MS. MAINIGI: Your Honor, you have our pledge that
10 we will move as quickly as we can and shorten what we can.
11 And I do think the evening will allow us to do that. I
12 think we'll do our best and get Dr. Gupta out of here.

13 THE COURT: Well, let's all come back at 9:00 in
14 the morning.

15 We'll get you out of here as soon as we can, Dr. Gupta.

16 MS. MAINIGI: Your Honor, I just want to ensure
17 for the record -- and I know Dr. Gupta knows this. There's
18 a wider group of plaintiffs involved in this litigation, but
19 I just want to ensure that Dr. Gupta obviously won't be
20 speaking to plaintiffs' counsel in this case, but won't
21 speak to the MLP plaintiffs' counsel either for whom he's an
22 expert tonight.

23 THE COURT: So you want me to instruct him not to
24 talk to anybody about his testimony?

25 MS. MAINIGI: Yes, Your Honor.

1 THE COURT: You're instructed not to discuss your
2 testimony with anyone during the time you're here and on the
3 witness stand, Dr. Gupta.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right. We'll be in recess until
6 9:00 tomorrow morning.

7 (Trial recessed at 4:58 p.m.)
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1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court
3 Reporter, and I, Lisa A. Cook, Official Court Reporter,
4 certify that the foregoing is a correct transcript from
5 the record of proceedings in the matter of The City of
6 Huntington, et al., Plaintiffs vs. AmerisourceBergen
7 Drug Corporation, et al., Defendants, Civil Action No.
8 3:17-cv-01362 and Civil Action No. 3:17-cv-01665, as
9 reported on May 5, 2021.

10
11 S\Ayme A. Cochran

12 Reporter

13 s\Lisa A. Cook

14 Reporter

15 —

16 May 5, 202117 Date
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